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**Audit of  
City of Milwaukee  
Restaurant Regulation**

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City of Milwaukee, Wisconsin

**August 2002**

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Office of the Comptroller

August 29, 2002

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To the Honorable  
the Common Council  
City of Milwaukee

Dear Council Members:

The attached report summarizes the results of our audit of City of Milwaukee Restaurant Regulation by the Milwaukee Health Department. The audit objectives were to evaluate Milwaukee Health Department compliance with legal requirements, State and Department policy, and to assess the effectiveness of regulation in protecting the public health and safety of customers of restaurants located within the City.

The audit found that the Milwaukee Health Department operates a professional restaurant regulation program with many strengths. However, significant changes are needed in restaurant inspections, enforcement, and program monitoring if the Milwaukee Health Department is to effectively identify and improve those restaurants posing health risks to customers.

Audit findings and recommendations are discussed in the Audit Conclusions and Recommendations section of the report, which is followed by responses from the Milwaukee Health Department.

This audit was conducted jointly with the Wisconsin Department of Health and Family Services, Bureau of Public Health, whose observations are included in Appendix 1. Appreciation is expressed to the Department and Bureau personnel for their assistance in this audit. Appreciation is also expressed to the Milwaukee Health Department for the full cooperation extended to the auditors.

Very truly yours,

W. MARTIN MORICS  
Comptroller

## **I Audit Scope and Objectives**

Wisconsin Statutes require the regulation of restaurants by the Wisconsin Department of Health and Family Services (State), for the purpose of protecting public health and safety. The State delegates its regulation of restaurants located within the City of Milwaukee (City) to the Milwaukee Health Department (Health Department). This is an audit of the Health Department restaurant regulation program.

The audit covered Health Department regulatory activities involving citizen complaint investigation, restaurant sanitary inspections, and Wisconsin Food Code and City ordinance enforcement. The audit did not include an examination of restaurant license fees or the related revenue collection.

The City Office of the Comptroller and the State Bureau of Public Health jointly conducted this audit. The audit included interviews with Health Department staff and examination of Health Department records. The State completed an examination of the Health Department restaurant inspection process, including field observations of actual restaurant inspections. State audit findings are included in Appendix 1.

## II Organizational and Fiscal Impact

In 1999 the Federal Centers for Disease Control and Prevention estimated that *"foodborne diseases cause approximately 76 million illnesses, 325,000 hospitalizations, and 5,000 deaths in the United States each year."* The Milwaukee area has not been immune to this problem. The Milwaukee Journal Sentinel reported that two local area Sizzler Family Steak House restaurants were responsible for an E.coli outbreak in July 2000 that sickened up to 600 people, resulting in 23 hospitalizations and one death.

In 1996 the Center for Science in the Public Interest reported that *"The best available national data show that, between 1983 and 1992, 42% of all reported food-poisoning outbreaks were traced to food eaten in restaurants, delicatessens, and cafeterias. In comparison, only 21% of the food-poisoning outbreaks were attributed to food eaten at home."* The risk of foodborne illness has likely increased with the increasing numbers of people eating away from home on a regular basis. Unlike their food prepared at home, restaurant customers normally have no control or knowledge of the food preparation or sanitary condition in restaurant kitchens. This makes an effective restaurant regulatory program a major government tool in protecting the public health and safety.

The U.S. Food and Drug Administration regulates all domestic and imported food sold in interstate commerce, with the exception of meat and poultry, which are regulated by the U.S. Department of Agriculture. In recent years, both the Food and Drug Administration and the Department of Agriculture have adopted a food safety program that focuses on applying science-based controls to prevent hazards that cause foodborne illness. This program is based on a system known as Hazard Analysis Critical Control Point, or HACCP (pronounced "has-sip"). This risk-based system identifies potential food hazards from biological, chemical, or physical contamination. Critical control points in food processing are then identified to ensure food safety. Controls involve critical food temperature and other limits and procedures for food storage, handling, processing and cooking. The Food and Drug Administration and Department of Agriculture require many food manufacturers and processors to implement formal HACCP plans for monitoring and preventing food hazards. HACCP appears to be having a significant impact on food safety. The Centers for Disease Control recently reported that HACCP principles have contributed to a 23 percent reduction in foodborne illness over the last six years.

The Federal government does not require restaurants to implement HACCP plans. However, the Food and Drug Administration, Department of Agriculture, and Centers for Disease Control jointly publish a Model Food Code that is available for adoption and use by state and local governments to regulate food establishments such as restaurants and grocery stores. HACCP principles were first incorporated in the 1999 version of the Model Food Code. This risk-based Model Food Code was a major departure from earlier sanitation standards. Instead of focusing on the sanitary condition of floors, walls, and ceilings, the 1999 Model Food Code focuses on critical risk factors in food storage, preparation, handling and presentation that are proven to pose a greater risk of foodborne illness, such as hand washing.

The Wisconsin Department of Agriculture, Trade and Consumer Protection regulates food in Wisconsin and has responsibility for inspecting grocery stores and other retail food establishments in the State under Wisconsin Statutes Chapter 97 and Administrative Code Chapter ATPC 75. The Wisconsin Department of Health and Family Services has the responsibility for inspecting restaurants and other establishments where meals are served in the State under Wisconsin Statutes Chapter 254 and Administrative Code Chapter HFS 196, which includes the Wisconsin Food Code (ATPC 75 also includes the Wisconsin Food Code).

Adopted in February 2001, the current version of the Wisconsin Food Code is based on the 1999 Food and Drug Administration Model Food Code, including the HACCP principles and critical risk factors. According to the Wisconsin Food Code, *"The purpose of this Code is to safeguard public health and provide to consumers, food that is safe, unadulterated, and honestly presented... This Code establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension."*

In addition to State Statutes and State Administrative Code, Milwaukee Code of Ordinances Chapters 60, 61, 68, 74 and 75 contain provisions pertaining to restaurants.

**The State delegates its restaurant regulatory responsibilities within the City to the Health Department under the terms of an agent agreement.** The new Wisconsin

Food Code with its focus on critical risk factors and HACCP principles presents many new challenges to the Health Department in the execution of these responsibilities.

The Consumer Environmental Health Division of the Health Department handles restaurant regulation, which includes licensing, information dissemination, complaint investigation, restaurant inspection, and enforcement of legal requirements. The 2002 Division budget is about \$1.7 million. In 2001 the Division collected about \$1.6 million in revenues, including nearly \$1.4 million in food license fees. The Division has 22 Environmental Health Specialists (19 involved with restaurant regulation) and their supervisors assigned to three field offices located at 841 North Broadway, 7630 West Mill Road, and 1639 South 23<sup>rd</sup> Street. During 2001 the Health Department licensed 2,106 restaurants.

### **III Audit Conclusions and Recommendations**

**The audit disclosed that the Health Department operates a professional restaurant regulation program with many strengths.** The State indicates that these strengths include *"...a foundation based on training and continuing education, a strong system of supervisory support, a frequent presence in the regulated establishments, inclusion of modern food safety principles, and specialization where appropriate."* (See Appendix 1).

**Overall, the Health Department restaurant regulation program produces a relatively high number of on-site inspections and reinspections given the available inspector staff who for the most part conduct professional, detailed inspections and follow-up visits. Also, the Health Department program obtains short-term compliance with its sanitary violation orders. However, the Health Department has not demonstrated the capability to identify and monitor repeat restaurant violators of the Wisconsin Food Code, or get violators to eliminate or materially reduce conditions posing a significant risk of foodborne illness. Important changes in both the focus of Health Department restaurant inspections and the enforcement actions taken are therefore required.**

#### **A. Restaurant Complaint Investigation**

The public can call or write the City concerning complaints about food poisoning and sanitary problems with City restaurants. In 2001 the Health Department investigated 865 customer complaints. **The Audit concludes that the Health Department investigates such customer complaints in a timely and adequate manner.** The Health Department issues written orders to restaurants for violations uncovered during complaint investigation.

#### **B. Restaurant Inspection Process**

**Although the number of licensed restaurants has remained fairly stable, the number of restaurant inspections and reinspections has been decreasing in recent years.** The Health Department reports for the last five years disclose that total restaurant inspections and reinspections have decreased each year from 13,005 in 1997 to 9,140 in 2001.



Inspections of restaurants (excluding temporary food stands) decreased by about 14 percent. Reinspections of restaurants (excluding temporary food stands) decreased by about 40 percent.

Staffing reductions due to inspector position vacancies, leaves of absence, and the elimination of one inspector position may be responsible for fewer inspections and reinspections in the last two years. One inspector position was eliminated in the 2000 budget, and two inspector positions were vacant during part of 2000. According to the Health Department, one inspector was out on leave for most of 2001 and three inspector positions were vacant during part of 2001; one became vacant in August and two in October.

There is some indication that Health Department restaurant inspector pay rates may be below market. The following Wisconsin municipalities are among those that appear to pay their inspectors significantly more than Milwaukee: Greenfield, West Allis, Madison, Appleton, and Eau Claire. This is not sufficient to conclude that inspector pay is below market, but is sufficient to warrant a compensation study.

The Food and Drug Administration's Recommended National Retail Food Regulatory Standard No. 3 calls for program management to develop and use *"...a process that groups food establishments into at least three categories based on potential and inherent food safety risks."* Also, Standard No. 4 calls for program management to assure that each inspector *"Verifies that the establishment is in the proper risk category and that the required inspection frequency is being met."*

The current Health Department Risk Assessment Policy issued in 1994 categorizes food establishments into low, medium, and high-risk categories, which require one, two, and three annual inspections, respectively. The type of food establishment generally determines the risk category. For example, most fast food and short order restaurants are medium risk, while full service restaurants are high risk. The policy states that *"Changes in the number of surveys [inspections] conducted per calendar year at each establishment (frequency) must be based on a documented inspection history or special circumstances... This frequency number can be increased or decreased by one number only from the risk definition category number with no zero allowed. Each supervisor must document and retain a copy of these changes at their station."*

**The Health Department is not meeting its inspection coverage goals for restaurants with higher food safety risks.** A review of regulation files on 25 restaurants for the period from 1994 through 2001 found clear violations of the Health Department inspection frequency policy in every calendar year and involving 15 restaurants. There were 37 instances where the number of annual inspections for these restaurants was reduced by more than one. Five of the restaurants had one calendar year each with zero inspections. There were also numerous other instances where the inspection frequency was one unit less than the category requirement, without explanation in the regulation file.

**Based on the number of written violation orders, it appears that about two-thirds or more of Health Department inspection effort involves identifying and following-up on less serious sanitary violations that do not have a direct link to foodborne illness (non-critical risk factor violations).** The Health Department reinspects restaurants to verify that corrective action is taken on all written orders for both critical and non-critical violations. Health Department inspectors routinely return to restaurants two or more times to follow-up on written orders. In addition to the staffing shortages mentioned above, such significant effort directed at resolving non-critical violations is likely a major factor in the Health Department's failure to meet its inspection coverage goals.

The review of regulation files on the audit sample of 25 restaurants for the period from 1993 through 2000 disclosed that about 80 percent of the Health Department's written orders pertained to non-critical violations. For these 25 restaurants, inspectors wrote nearly twice as many critical violations in 2001 than in 2000. Several factors may be responsible for the increase in the detection of critical violations in 2001, including HACCP training for inspectors, new HACCP type inspections introduced in 2001, and greater inspector awareness about the importance of critical violations resulting from publicized E.coli outbreaks. About 65 percent of the written orders on these restaurants in 2001 pertained to non-critical violations.

A separate State audit sample of one recent Health Department inspection report for each of 72 restaurants disclosed that about 74 percent of the written orders pertained to non-critical violations.

The Food and Drug Administration's Recommended National Retail Food Regulatory Standard No. 3 calls for *"...a regulatory inspection system that uses HACCP principles to identify risk factors..."*

Late in 2001 the State conducted a field evaluation of inspections performed by all Health Department inspection personnel. The State found that 10 of the 18 inspectors reviewed were not adequately covering the Wisconsin Food Code critical risk factors. Also, the State found that HACCP principles need to be incorporated to a greater extent in routine inspections (see Appendix 1). The State noted that *"[Health Department] Supervisors mentioned that an effort was already underway to change the focus of the inspections onto the CDC risk factors. Certainly, most of the inspectors will say they are trying to do just that. The results, unfortunately, tell a different story... The very concept of CDC risk factors is new to the food code. To determine compliance requires not only a different physical approach (observation vs. activity), it also requires the inspector to ask many questions. With only a few exceptions, inspectors with [the Health Department] were really lacking in this area."*

The Health Department began to implement separate HACCP type inspections and reinspections in 2001. These were conducted at some of the restaurants considered appropriate for such reviews. Of the 9,140 total inspections and reinspections in 2001, there were 421 special HACCP inspections and 142 HACCP reinspections, or six percent of total inspections and reinspections.

At the time of the State inspection process evaluation, the Health Department was using a restaurant inspection report form that did not highlight critical risk factor violations. Beginning in 2002, the Health Department implemented a new inspection form that is based on the State form recommended in Appendix 2, with one important difference. The State form calls for inspectors to indicate either compliance or noncompliance for each critical risk factor, while the new Health Department form continues to be an exception based report form for identifying only areas of noncompliance. The State recommendation to indicate compliance status for each risk factor is consistent with the Food and Drug Administration's Recommended National Retail Food Regulatory Standard No. 4 which calls for program management to assure that each inspector *"Determines and documents the compliance status of each risk factor and intervention through observation and investigation."*

## **Recommendation 1: Inspector staff allocation**

The Health Department should focus its inspection effort and staff allocation on identifying and addressing the critical risk factors that the Wisconsin Food Code indicates are more likely to result in foodborne illness. HACCP principles should be applied routinely in all inspections. To improve inspection coverage, the Health Department should significantly reduce both the inspection and reinspection effort spent on the less serious (non-critical) restaurant sanitary violations. For example, the State indicates that inspectors should *"worry about food contact surfaces, don't worry about non-food contact surfaces."* This change can be expected to save substantial inspector hours. Based on the number of written orders, the Audit estimates that the Health Department is currently devoting about six full-time-equivalent positions, or \$315,000 a year, toward pursuing the correction of non-critical restaurant violations. These resources could be more effectively applied to higher priority needs, namely, meeting restaurant inspection coverage goals, documenting the compliance status for each critical risk factor during an inspection, and monitoring repeat restaurant violators.

## **Recommendation 2: Inspector training and inspection practices**

The State analysis (Appendix 1) has identified a number of specific recommendations to improve the efficiency and increase the impact of current restaurant inspections. The Comptroller has selected recommendations from this State analysis along with additional Comptroller comment as follows:

- a) Continue training to expand inspector competence in identifying critical risk factor violations of the Wisconsin Food Code, and in utilization of HACCP related inspection techniques. Consider formal assertiveness training with needed probing, follow-up questions and active observation techniques for restaurant inspectors. Such training may improve inspector effectiveness in changing the unsanitary practices found in some restaurants.
- b) Document the results of inspections during the course of the restaurant inspection and distribute and explain same to the restaurant operator at the conclusion of the inspection. Currently, a separate visit is made because the inspection is documented in the inspector's office following the inspection. This change would save substantial inspector staff time and provide immediate feedback to the restaurant operator. Consider the use of laptop computers to document inspection results. With laptop

data entry, this information could also be transferred in an automated fashion to a citywide inspection database without manual re-entry of data. See Recommendation 7 below.

- c) Require inspectors to indicate the compliance status for each risk factor on the Health Department restaurant inspection report form, consistent with the State inspection form in Appendix 2.
- d) Consider extending the current 18 month rotation cycle for inspectors. Extending this cycle to, say, 24 months would more fully utilize the inspector familiarity and relationships developed with restaurant management.

### **Recommendation 3: Personnel classification study**

The State found that the current Health Department restaurant regulation staff is well educated, with an excellent percentage of State certified Registered Sanitarians. However, the scope of responsibility of Health Department staff has shifted dramatically with the changes in the Wisconsin Food Code and the implementation of HACCP. An increased focus on prevention and monitoring of food hazards has required a different set knowledge, skills and abilities. The State indicates that *"This is because the new food code requires a shift in approach, from 'floors, walls, and ceilings', to a focus on CDC risk factors..."*. The extent to which these changes impact staff pay classifications needs to be assessed. If the Health Department is to retain competent staff it must be assured that compensation is competitive in the marketplace, particularly given the increased demands on staff and staff turnover.

The Department of Employee Relations should conduct a classification study of the positions in the Health Department Consumer Environmental Health Division to promote the attraction and retention of qualified professional restaurant regulation personnel.

### **C. Restaurant Sanitary Enforcement**

The audit indicates that restaurant regulatory enforcement appears to be effective in situations where the Health Department observes a severe and imminent public health risk. However, the Health Department does not appear to be effective in improving restaurant sanitary conditions and reducing public health risks over

**time. The Health Department does not take effective, progressive enforcement action against recalcitrant restaurants.**

The Health Department has a number of available enforcement options, including restaurant inspection and reinspection, verbal warning, written enforcement order, administrative hearing, citation, personal forfeiture, license suspension or revocation and, potentially, civil action. Written orders mandate correction of the noted violations but carry no fine or other assessment. Citations issued for failure to correct violations can cost restaurants between \$150 and \$400, depending on the violation.

Wisconsin Statutes and Administrative Code provide the Health Department with the authority to enforce the Wisconsin Food Code and to impose penalties on recalcitrant restaurant operators up to and including license revocation. Further, the Milwaukee Code of Ordinances Chapter 68 requires the Health Department to enforce food license regulations. It authorizes the Health Department to issue citations to restaurants for sanitary violations, and to immediately suspend the license and close a restaurant whenever there is a substantial hazard to public health. Milwaukee Code of Ordinances Chapter 68-6.4 authorizes the Health Department to take action to revoke a restaurant license *"For serious or repeated violations of any of the requirements of this chapter..."*. This City ordinance provides a range of increasingly severe penalties for repeated violations.

The audit included a detailed examination of the enforcement actions taken and their impact covering a period from 1993 through 2001 for the sample of 25 restaurants. **The Audit found no apparent improvement in the sanitary condition of these 25 restaurants during the nine-year period.** The audit indicates that the Health Department obtains short-term compliance with its written orders on sanitary violations after several follow-up reinspections (generally within a month), only to find on subsequent inspections that the restaurants have permitted the same or similar violations to recur. While a portion of the operators of these 25 restaurants changed during the nine years, the overwhelming conclusion of the audit sample is that **once initial compliance with the written orders was achieved, these restaurants returned to the same conditions and practices generating the original sanitary violations.**

For the years 1997 through 2001, written orders (without fines) for these 25 restaurants increased from 307 to 522 orders, including a 212 percent increase in critical risk factor

violation orders (58 to 181). **Despite the increased number of written orders to correct violations, only seven citations were issued to these 25 restaurants over the nine-year period. Four of the seven citations were issued to a single restaurant.** Without the prospect of probable financial penalty or license suspension, there was apparently little incentive for these restaurants to eliminate even the most critical violations.

The Food and Drug Administration's Recommended National Retail Food Regulatory Standard No. 3 calls for *"An inspection program that focuses on the status of risk factors, determines and documents compliance, and targets immediate and long-term correction of out-of-control risk factors through active managerial control.* Also, the Food and Drug Administration's Standard No. 6 calls for *"A written step-by-step procedure that describes how compliance and enforcement tools are to be used to achieve compliance... Enforcement action includes, but is not limited to, such activities as warning letters, reinspection, citations, administrative fines, permit suspension and hearings... The desired outcome of this standard is an effective compliance and enforcement program that is implemented consistently to achieve compliance with regulatory requirements."*

**The current Health Department enforcement policy issued in 1992 is out of date and does not provide adequate progressive enforcement guidance.** The policy provides limited guidance for progressive enforcement utilizing warning letters, administrative hearings, and citations. The policy states that *"Presently, the citation is the tool most frequently used to get recalcitrant operators to comply."* Yet as mentioned earlier, there is little policy guidance provided as to the specific violations, extent of repeat violations or other conditions which should trigger the issuance of a citation. In some cases administrative hearings are to be held before citations are issued. However, the Health Department has not held an administrative hearing since 1999. The current Health Department policy provides no guidance on the use of license suspensions or revocations for progressive enforcement of repeat violators. The only policy reference to license suspension appears to be for situations involving severe and imminent health risks. The policy states that *"Conditions requiring an immediate license suspension must be discussed with and approved by a supervisor."*

**Health Department enforcement activity reports indicate that the total number of citations issued for restaurant violations has dropped substantially in the last two years, from 153 citations in 1999 to 70 citations in 2001, a 54 percent decrease. This**

decrease may have been caused in part by the transfer of enforcement staff from the Health Department to the Department of Neighborhood Services in 1999. Also, inspector vacancies and a leave of absence during 2001 no doubt contributed to the decline in inspections.

While evaluating the Health Department inspection process, State auditors questioned a number of inspectors on policies guiding the issuance of citations. **Most inspectors were unclear about when to issue a citation. The audit concludes that the lack of a clear citation issuance policy contributed to the low number of citations issued.**

While license suspension is among the most severe enforcement actions available, the Health Department could not provide the number of license suspensions in 2001. The Health Department indicates there were no license revocations in 2001.

The Health Department advises and counsels restaurant operators and their employees on specific sources of foodborne illness and ways to prevent such illness. **The Health Department appears to use restaurant operator counseling as a key tool to bring restaurants into compliance with the required public health standards.** The emphasis is on restaurant operator "buy-in" through persuasion. Beyond counseling, the enforcement approach currently employed focuses on written orders and, although declining, written citations in some situations. In rare situations the Health Department has been willing to close a restaurant posing a severe and imminent public health risk.

The education and counseling of restaurant operators likely brings many if not most City restaurants into at least short-term compliance with the Wisconsin Food Code. However, the audit concludes that the lack of progressive enforcement of the Wisconsin Food Code and City ordinances allows recalcitrant restaurants to continue to violate these laws with impunity. The Health Department needs to identify and monitor such restaurants closely, imposing increasingly severe penalties as provided by law to achieve compliance.

**The Health Department is not closing restaurants for failure to pay license fees as required by City ordinance.** Milwaukee Code of Ordinances Chapter 68-4.8a requires the closure of restaurants that have not paid license fees within 15 days of notice of non-payment. During 2001, the Health Department issued citations in lieu of closure to 21 restaurants for failure to pay license fees. These citations represent 30% of all restaurant citations issued in 2001.



**The Health Department is issuing renewal licenses to restaurants that have unpaid citations in conflict with City ordinance requirements.** Milwaukee Code of Ordinances Chapter 68-4.8b requires that all citations be paid before a license is issued. During 2001, the Health Department issued renewal licenses to four restaurant operators with unpaid restaurant citations.

#### **Recommendation 4: Develop and implement progressive enforcement of the Wisconsin Food Code**

**The Health Department should develop and implement a Wisconsin Food Code Progressive Enforcement Policy,** consistent with Food and Drug Administration standards. The Progressive Enforcement Policy should clearly identify a set of enforcement actions (orders to correct, progressive fines, personal forfeitures, etc.) to apply to critical violations of the Wisconsin Food Code. The Policy should include the ultimate enforcement sanctions of license suspension and revocation for recalcitrant restaurant operators continuing to put the public at risk of foodborne illness due to their critical food handling and preparation violations.

The Wisconsin Food Code Progressive Enforcement Policy should be supported by written enforcement procedures to assure that enforcement actions taken are consistently applied to all restaurants subject to the Policy. The enforcement policies and procedures should be codified in the Health Department Consumer Protection Division Procedure Manual. Taken together, these Health Department practices should:

- Move from restaurant operator counseling to increasingly severe enforcement actions for chronic and repeat violators, focusing on those violations posing the most significant risks to public health.
- Provide clear guidance as to the appropriate circumstances for which a citation should be issued and the appropriate dollar fine.
- Provide realistic, aggressive time limits for compliance to minimize the public health risk of foodborne illness.
- Be properly communicated and explained to all restaurant inspectors.
- Provide for restaurant operator appeal procedures.
- Recover the cost of Health Department training sessions and on-site reinspections through license fees or special purpose fees.

### **Recommendation 5: Enforce City ordinance requirements on closing restaurants for failure to pay fees and fines**

The Health Department should enforce City ordinance requirements to close restaurants for failure to pay license fees, and not issue licenses until all restaurant fees and citations are paid in full.

#### **D. Restaurant Compliance Monitoring**

How well do current Health Department enforcement practices work? Determining the medium-to-long-term impact of restaurant enforcement practices requires a periodic monitoring of the extent of Wisconsin Food Code and related City ordinance violations. The records of on-site restaurant inspections provide an ideal basis for such monitoring. The audit therefore interviewed Health Department management and examined available Department reports, seeking evidence of Health Department review and analysis of its prior years' inspection reports.

The audit found that the Health Department Consumer Environmental Health Division annual reports do include information on restaurant regulation activity outputs, such as the number of licenses issued, number of inspections, number of complaints investigated, etc. However, the reports include little if any information on program outcomes that would indicate the impact of City regulation, such as trend information on the sanitary condition of restaurants.

**The audit determined that the Health Department does not regularly monitor the effectiveness of its restaurant regulatory program.** The audit could find no trend analysis or statistics on the incidence of Wisconsin Food Code violations, either citywide, by inspection district or by individual restaurant. The audit could uncover no identification of "repeat violator" restaurants posing the greatest public health risk. In fact, the audit could find no formal or internal Health Department reports addressing the effectiveness of its restaurant enforcement efforts.<sup>1</sup>

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<sup>1</sup> As mentioned in the "Restaurant Sanitary Enforcement" section of this audit, a sample of such trends in 25 selected restaurants as prepared by the auditors showed that Health

**The Health Department does not have the computer database or spreadsheets needed to monitor restaurant compliance.** Data on restaurant compliance is contained in paper files that are centrally stored and not available for routine review by the restaurant inspectors. The Health Department does not normally analyze these paper files manually to determine individual restaurant compliance or compliance trends within inspection districts over time. Restaurant inspectors and supervisors rely on their memories concerning restaurant compliance. This situation is made even more difficult by the rotation of inspectors to new inspection districts every 18 months.

The State notes that most local health departments in Wisconsin including the Milwaukee Health Department do not adequately track and analyze Wisconsin Food Code violations. The State found little if any data analysis or reporting by the Health Department. The State found that Health Department supervisors are unable to identify the type of violations written by individual inspectors, whether specific violations occur more frequently in certain types of restaurants, and how citations are used for enforcement.

#### **Recommendation 6: Prepare Annual Restaurant Compliance Reports for the Mayor and Common Council**

The Health Department should prepare annual Restaurant Compliance Reports for the Mayor and Common Council that provide meaningful analysis and reporting of restaurant sanitary conditions in Milwaukee. The Health Department should compare and analyze inspection results over time to determine the extent of progress being made to reduce and eliminate the critical restaurant violations that can lead to foodborne illness. These annual reports could include easy to read charts and graphs to help identify trends and to supplement narrative analysis. The extent of "critical risk" Wisconsin Food Code violations could be reported citywide, by inspection district, by type of establishment (full service restaurant, fast food establishment, delicatessen, etc.).

The first Report for 2002 should be issued as soon as possible after year-end. Since the Health Department has not been tracking and analyzing restaurant compliance data, sufficient trend information may not be available for the 2002 Report. However, the

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Department enforcement efforts had no apparent impact on the incidence of Wisconsin Food Code violations over the last nine years for the sampled restaurants.

2002 Report can provide a thorough assessment of the sanitary condition of Milwaukee restaurants, as a base line for trend analysis in subsequent annual Reports.

### **Recommendation 7: Phase in development of a Restaurant Compliance Monitoring and Reporting System**

The Health Department should establish a set of performance measure indicators that collectively measure the impact of its inspection efforts on restaurant sanitary conditions. An automated Restaurant Compliance Monitoring and Reporting System should be implemented to support these performance measure indicators. This System would incorporate data from restaurant inspection reports and other compliance information allowing the Health Department to adequately monitor its restaurant regulatory program and regularly report compliance with that program. Such monitoring and reporting is essential to the fair and consistent execution of a progressive enforcement policy.

Computerization of inspection report data entry should form the basis for implementing the Restaurant Compliance Monitoring and Reporting System. The inspection report form would be computerized in a database software application to ease and standardize data entry of inspection results. With the provision of laptop computers to each inspector, computerization of this form will allow direct data entry on-site at the conclusion of the inspection, eliminating the need for a separate restaurant visit and providing immediate feedback to restaurant operators.

Regularly (daily, weekly, bi-weekly or?), inspectors would "upload" their inspection results into a citywide restaurant inspection database organized by inspector and inspection district. This database would provide the Health Department with the ability to routinely extract, analyze and report information regarding restaurant compliance with the Wisconsin Food Code by individual restaurant, type of restaurant, inspection district and citywide.

### **Recommendation 8: Consider posting the results of restaurant inspections on the Internet**

When a Health Department inspector uncovers sanitary violations, which constitute a risk of foodborne illness, the inspector normally does not revoke the operator's license.

Unless the inspector should identify a severe and imminent public health risk, the violation is noted, and the operator is given an order to correct and in some instances a citation (fine).

There is a time period after inspection but before restaurant operator action to correct these violations during which customers are unknowingly at risk of becoming ill due to the restaurant's poor sanitary practices. Moreover, the audit sample shows that even following short-term correction, many restaurant operators are likely to allow continuation of practices in poor food handling, lack of proper hand washing, etc. after the inspector has "cleared" the original violations.

Many consumers including restaurant patrons are willing to assume certain risks in their purchasing decisions. This is indeed their choice, weighing those risks against the benefits and cost of the product or service. However, without basic information about a restaurant's sanitary condition, patrons of Milwaukee restaurants must now unknowingly accept the risk of foodborne illness even though relevant information about these matters is being maintained by the Health Department. Many local health departments throughout the U.S. and Canada are now using the Internet to keep their citizens informed about the sanitary conditions of restaurants they inspect. These include Denver, Colorado, Maricopa County Arizona, Santa Clara County California, Toronto Canada and numerous others. Some provide only a list of violations reported by restaurant while others provide "plain language" explanations interpreting the significance of each violation. Still others compute a performance score for each restaurant inspected including a "pass-fail".

While this Internet based information takes different forms, allowing the public to access factual, objective information about a restaurant's sanitary condition and practices provides a strong incentive to comply for those restaurants which might otherwise ignore Health Department directives and related City Ordinances.

Given the practical relevance of this information to Milwaukeeans, the audit recommends that the Health Department determine if it is feasible to make available some form of restaurant inspection results on the Internet.

## **Recommendation 9: Develop an audit implementation plan**

While additional inspector training, computerization of restaurant inspection results, preparation of compliance reports and use of the Internet will all take time and resources to implement, **the Audit strongly urges that action be initiated now to strengthen the Health Department restaurant regulation program.** The audit suggests the following approach to audit implementation:

- a) After full discussion with the Health Department, the Common Council should determine what audit recommendations are to be implemented and/or actively explored.
- b) Next, the Health Department should develop an implementation work plan and estimate the calendar time, work effort and funds needed, if any, to implement or otherwise follow-up on each Council directed recommendation. In this task, the Health Department should divide recommendations into those that can be implemented in the short term (within six months), one year and two years or more. Throughout this effort, the Health Department should consider restaurant fees/charges wherever possible to recover the costs of enhancing its restaurant regulation program.
- c) The Comptroller would then review the status of the implementation work plan annually, and, together with the Health Department, report progress to the Mayor and Common Council.

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## **APPENDIX 1**

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# **Audit of the Milwaukee Health Department**

December 31, 2001

Written by

Gregory A. Pallaske, Section Chief

Bureau of Public Health

Division of Health and Family Services

Audit conducted by:

Gregory Pallaske

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## Part 1. Overview

Responsibility for inspection of food service facilities in the State of Wisconsin is divided between the Department of Agriculture (DATCP) and the Department of Health and Family Services (DHFS).

DATCP inspects retail food outlets, such as grocery stores and convenience markets. DHFS inspects establishments at which a meal is served, such as restaurants and hotels that provide a continental breakfast.

Both of these Departments subcontract with local health departments, which become Agents of the State. The authority to do so, and the procedures to be followed, is contained in HFS 196 and DATCP 75. HFS 196.12 specifically spells out the requirement for an annual evaluation of the Agent by the Department of Health, and provides broad general guidelines for how that evaluation is to be conducted.

For a number of reasons, evaluations have not been conducted for several years. Although the number of Agents has grown steadily, staffing at the central office has not. By July 2002, there will be 39 Agents needing to be evaluated, a monumental task for a small staff. Additionally, the evaluation process has evolved over time to become quite contentious, with antagonism developing between the Department and the Agents. The very process was considered to be flawed by the recipients, since it was based on facilities rather than inspectors. Further, the reports were often not delivered in a timely fashion, adding additional doubt as to the validity of the process. For these and other reasons, the evaluation process was halted in the early 1990's. A report written in 1995 detailed the results of a work group formed to identify the major problems with the existing process. Some of the points:

- Comparison of evaluation inspections with inspections done at some other time by the Agent are not valid or useful
- Evaluations should identify successes as well as problems
- The same evaluation process should be applied to the Regional Offices of State health inspectors
- Written results should be available promptly.

In 1996, work continued on revising the process. Additional efforts were made every year to create a method agreeable to the Department, the State Health Officer, and the Agents, with little success. In retrospect, the failure was probably caused by a continued focus on the facility, rather than the inspector.

In January of 2001, the Department was given the mandate to revamp the evaluation process and repair the damaged relationships between the Department and some of its Agents. In the summer of 2001, the FDA began developing and teaching a new process they intended to use to evaluate State programs under contract to the FDA. This process was designed primarily for manufacturing facilities, but the concepts were sound. In concert with the adoption of the 1999 Federal Food Code, a change of focus was required. Put simply, the focus of the inspection shifted from "floors, walls, and ceilings" to those processes and procedures that could have the potential of causing a food borne illness. The principles of HACCP (Hazard Analysis, Critical Control Point) are expected to be followed when doing the inspections; that is, identify potential hazards, and teach the operator how to create a system to control those hazards.

The principles of HACCP have been around for a number of years, and many Agent health departments have embraced and taught them to their staff and operators. However, HACCP was designed for food processing facilities, and is more difficult to apply to a restaurant. The quantum leap was to recognize that it is the behavior and skill of the inspector, not the performance of the facility, which most effectively measures the quality of the inspection program. There is absolutely no correlation between the number of violations written in a given establishment and the establishments' potential to cause illness. Looking through the other side of the lens, there is also no correlation between the number of violations an inspector writes and the effectiveness of that inspector. The bottom line is that no health inspector can prevent a food borne illness, and that should not be their focus. Rather, inspectors must teach the operators how to prevent outbreaks. Evaluating that behavior is the new focus of the Department, based on the FDA model mentioned above. That model, and how it is to be used, will be explained in the next two sections.

In the fall of 2001, the Office of the Comptroller for the City of Milwaukee approached the Department with a request for assistance in conducting their own audit of the City of Milwaukee Health Department (MHD). The Comptroller routinely audits various departments of the City government, but this was the first time they were trying to evaluate the effectiveness of an inspection program for restaurants. The Department agreed to perform the inspection audit, as this was the perfect opportunity to refine the newly developed tool and begin the process of evaluating all Agent programs throughout the State.

## Part 2. Field Audit Procedures

The Section Chief and experienced inspectors from the central office of the Department worked together to revise the FDA model to better evaluate restaurant inspections. MHD currently has 18 inspectors active in restaurants. The Department decided to perform three "observation inspections" with each inspector<sup>1</sup>. Since the evaluation is on the program, not the individual, and definitely not the facilities, this sample was determined to be large enough to identify the trends. In every case, the auditor was comfortable with the conclusions drawn from three inspections per inspector.

The MHD provided a database of all of their facilities, sorted by inspector assignments and by risk factors<sup>2</sup>. Generally, two moderate-risk and one high-risk licensees were semi-randomly chosen per inspector as the facilities in which the audit would be conducted<sup>3</sup>. However, inspectors were allowed to veto an establishment for a valid reason. The few substitutions that did take place were because the establishment had just been inspected, or because legal action was pending and the environment might not be conducive to a routine inspection.

The auditor accompanied the inspector for an eight hour shift, observing as three inspections were done. The match-up between auditor and inspector was also random. The inspector explained to the operator that they were there to conduct a routine survey (MHD's phrase for an annual inspection), and that the auditor was along to evaluate the inspector. None of the operators objected to having a State auditor in their establishment.

The inspectors were instructed to perform as they normally would. There was a certain amount of routine conversation between inspector and auditor, but the auditors did not provide feedback, or answer any questions that would impact the process. The auditors took notes throughout on both "good" and "bad" points, and filled out the evaluation form after the inspection was completed<sup>4</sup>. None of the inspectors

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<sup>1</sup> A few of the inspectors only received 2 audit inspections because of time constraints. The auditor had discretion to request a 3<sup>rd</sup> inspection if he felt it necessary to properly evaluate the performance.

<sup>2</sup> The MHD uses a tool to divide its establishments into low, moderate, and high risk/complexity, and bases the frequency of inspection on the results.

<sup>3</sup> It was "semi-random" because the Department purposely did not choose ethnic restaurants where there could be a significant language barrier, since one facet of the evaluation looked at communication skills.

<sup>4</sup> MHD does a very short "exit interview" after the inspection, then types the inspection at the office and returns for a more formal interview the next day. Because logistics did not allow the auditors to be present for the formal interview, the inspectors were instructed to hold a lengthier exit interview than normal. Copies of the final written report were provided to the auditors later.

received any feedback from the auditor until the entire department was audited. These results were given to the immediate supervisors to share with their folks in addressing both positive and negative areas.

For each evaluation factor, the inspector received a "satisfactory" or "needs improvement". If the total of "needs improvement" marks was greater than 3, then the overall score for that inspection was also "needs improvement". Negative marks were given if the inspector failed to see or react to something they should have, but not for factors the auditor saw but the inspector couldn't. For example, if the inspector was talking to the manager about a specific problem and behind her back the auditor observed an employee cross-contaminate something, nothing was written down. On the other hand, if she walked by a product being improperly thawed and did not react, the result would be a "needs improvement", especially if the problem was overlooked because the inspector was focusing on floors, walls, and ceilings.

### **Part 3. Audit Tool**

As mentioned earlier, the audit form is based on an FDA model. The Department "tweaked" this tool, throwing out a few questions that concerned manufacturing facilities exclusively, and altering a few others to better fit a restaurant inspection (see Appendix 1). One of the auditors then conducted a restaurant inspection while the other two audited him. Afterwards, the tool was further refined based on that experience and feedback.

The tool consists of three sections: preparation, inspection, and communication. Each question, and a brief overview of what the question means, is outlined below.

#### ***Preparation:***

1. *Did the inspector review the establishment file for the previous inspection report and possible complaints or access other available resources in preparation for the inspection?*

Inspector should be aware of the historical violations written, when the last inspection took place, and if there are any outstanding orders. Inspector should also know when the establishment is open, when food prep is most likely to occur, and be aware of seasonal changes.

2. *Did the inspector have the appropriate equipment and forms to properly conduct the inspection?*

Inspector should have a hair net or hat if the facility requires it, a flashlight, inspection forms or notepad, variety of test strips, writing implements, etc. Requirements may vary from one Agent to the next.

## ***Inspection:***

1. *Did the inspector review the menu or ask questions to determine which potentially hazardous foods (PHF's) or processes should be evaluated?*

Inspector should conduct a menu review with the manager if not aware of the foods in this facility. Inspector should check for seasonal differences, such as a sandwich shop serving chili in wintertime. This is an appropriate time to determine what foods and/or processes are subject to cooling and reheating. Inspector should verify (not assume) that nothing has changed since the previous inspection.

2. *Did the inspector select appropriate products for the inspection and, if necessary, make adjustments based on what the firm was producing?*

Inspector should cover all areas of the facility. PHF's, especially those requiring heating and cooling or extensive handling, should be the primary focus of the investigation. If necessary, the inspector should look for bulk foods stored in the walk-in<sup>5</sup>.

3. *Did the inspector assess the processing practices of the employees critical to the production and storage of safe food?*

Inspector should spend a fairly significant portion of the inspection time simply standing and watching the food handling that is occurring. Without this step, many critical violations will be missed. Inspectors should note when cross-contamination, bare hand contact, or hand washing violations occur. The focus should be on what the food handlers are doing.

4. *Did the inspector properly evaluate the likelihood that conditions, practices, components, equipment, or facilities could cause products to be adulterated or unsafe?*

Inspector should note improper storage setups, large containers of hot foods being improperly cooled, cross contamination in displays or layout of food products, physical problems likely to allow contamination or infestation, etc. The focus is on facilities and equipment that could cause a problem.

5. *Did the inspector recognize violative conditions or practices if present and document findings consistent with State/Agent procedures?*

This is an assessment of the observational abilities and judgment of the inspector. When an inspector should note a problem and fails to, it will be noted here. Included in this "judgment" is curiosity- an inspector will often encounter a procedure of product she has never seen before. These should be questioned and followed up on. Additionally, the final written inspection should follow agent procedures and guidelines, and should include all the observations noted during the inspection<sup>6</sup>.

6. *Did the inspector demonstrate the ability to distinguish between significant vs. insignificant observations and isolated incidents vs. trends?*

This is where the "floors, walls, and ceiling" inspector gets hurt. Obviously, if a place is filthy, it should be noted (see footnote 6), but writing orders to repaint a dingy wall and for the employees to stop chewing gum while neglecting to evaluate and/or note critical violations is an ineffective use of inspection time.

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<sup>5</sup> Cooks or managers will often state that no bulk foods are saved, cooled, or reheated, but then a large kettle of leftover soup can be found in the cooler.

<sup>6</sup> The exception to this is when a general order is written to improve overall housekeeping. The inspector will point out to the manager a number of areas where dirt and filth have accumulated, but will not write each area as a separate order. The assumption is that a restaurant operator should be able to tell when something is dirty.

7. *Did the inspector act in a professional manner and demonstrate proper sanitary practices during the inspection?*

Inspector should wash hands before starting the inspection, follow rules regarding hats or hair nets, and be careful not to cause cross-contamination with a thermometer, clipboard, or any other object. Inspector should be appropriately dressed according to Agent standards, and should show respect for all restaurant employees. Conversations with management or employees during the inspection should never be condescending, emotional, or accusatory.

8. *Did the inspector check compliance with the CDC risk factors by taking temperatures, checking sanitizers, evaluating demonstration of knowledge, ensuring safe food sources, and verifying safeguards against cross-contamination?*

Is the inspector focusing on the conditions most likely to cause food borne illnesses? Are they asking plenty of open-ended questions to glean the most information they can from management and employees? Did they watch the operation long enough to verify if employees were washing their hands when needed, or if cross-contamination is a problem in the design and flow of the operation?

### **Communication:**

1. *Did the inspector properly identify himself/herself and make appropriate introductions, which include explaining the purpose and scope of the inspection?*

Inspector should seek out a manager upon arrival, explain carefully why they are there, and why the auditor is there. They should automatically show any Agent-issued identification without being asked. Managers should be given the opportunity to accompany the inspector.

2. *Did the inspector use suitable interviewing techniques?*

Inspector should ask many open-ended questions so as to better understand the processes, and evaluate demonstration of knowledge. Questions should be asked of employees as well as management. Evasive answers should be pursued, but attitude and tone should remain cordial and pleasant. If procedures are not explained clearly, continue to seek answers.

3. *Did the inspector explain findings clearly and adequately throughout the inspection?*

Inspector should clearly differentiate between the significant violations and the less important. When describing a problem, they must be clear and concise, detailing exactly what the issue is, why it has public health significance, and how it can be corrected. Everything of importance should be reviewed at the exit interview.

4. *Did the inspector alert the firm's management when an immediate corrective action was necessary?*

The inspector should have a clear set of guidelines as to when a product needs to be discarded or reprocessed, and should seek management agreement. Did the inspector not point out a critical violation for any reason?

5. *Did the inspector answer questions and provide information in an appropriate manner?*

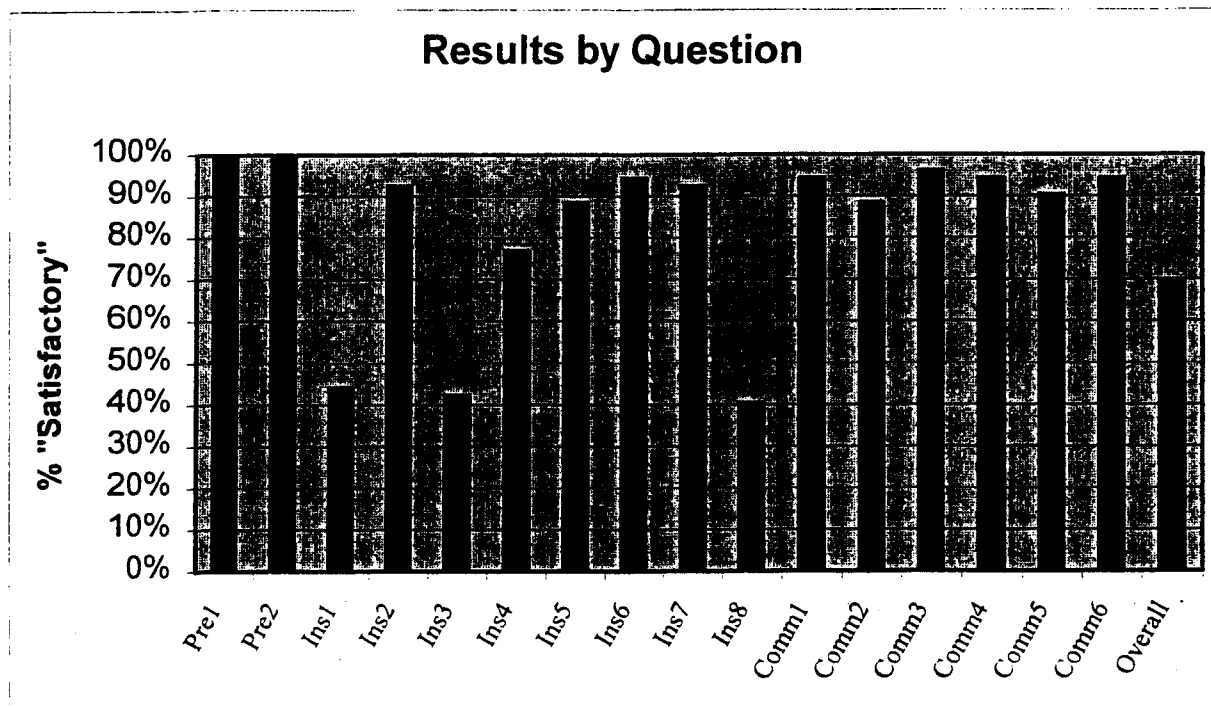
Inspector should never make up an answer or give a vague response. Questions should be answered pleasantly with an attitude and tone of respect. Never discuss actions being taken against a competitor. Bearing and demeanor should remain professional in the face of hostility. "Teachable moments" should be taken advantage of whenever they present themselves.

6. *Did the inspector write their findings accurately, clearly, and concisely on the Agent form/document left with the firm?*

Inspector should write all significant violations in a clear, legible, easy-to-read format without jargon and acronyms. Violations should include corrective actions. Critical violations should be listed before non-criticals.

Each of these sixteen questions is equally weighted. If fourteen or more are rated as satisfactory, the overall inspection is considered satisfactory. Thirteen or less results in an inspection being marked as needing improvement. Keep in mind that the auditor is not reacting to individual inspectors, but rather, is looking for trends that reflect the program as a whole. Those trends are discussed in the next section.

## Part 4. Summary of Trends



### Results by Question:

The chart above shows the results question by question. It is evident that there are many more areas of strength than weakness with the MHD program. Every single inspector was properly dressed, had reviewed the previous inspection (or was familiar with the establishment), had all of their equipment, presented their ID's, and were ready and eager to go. During the inspection, nearly every inspector focused on potentially hazardous foods (Ins2), recognized and recorded violations (Ins5), disregarded the frivolous and insignificant (Ins6), and conducted themselves in a professional manner (Ins7). Looking at the communication questions, it quickly becomes obvious that MHD hires people with the ability to discuss

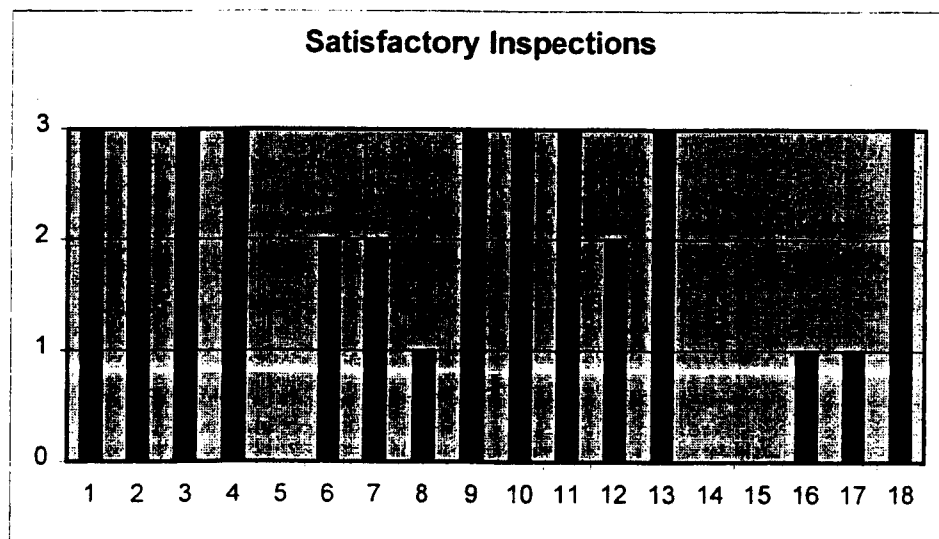


their findings clearly and concisely with the operators. All in all, this is a good program with friendly, likeable inspectors who are able and willing to establish the kind of positive rapport needed to motivate and teach operators and employees in the restaurant business. MHD contains an excellent mix of young and old, experienced and new, male and female, with diverse backgrounds and interests.

There are three areas identified as definitely needing improvement: Ins1, Ins3, and Ins8. A fourth area, Ins4, was good, but not as good as the rest of the "satisfactory" scores. Ins1 is the menu review, Ins3 involved watching the employees, Ins4 involved assessing the impacts of equipment and procedures, and Ins8 evaluated the consideration of risk factors. These four areas will be dissected one by one in the next section.

### ***Results by Inspector:***

Eighteen inspectors were audited, as shown in the graph below:



Note that inspector number 6 and number 8 each performed only two inspections. The inspector numbers are in no specific order. Of the inspectors, ten were rated "satisfactory" on every inspection. Four inspections (two each from two inspectors) were "perfect", that is, nothing was marked as "needs improvement". Three inspectors rated "needs improvement" on one of the inspections, two needed improvement on two of three, and three other inspectors were not rated "satisfactory" on any of their inspections.

## Part 5. Areas of Improvement:

Ins1: "Did the inspector review the menu or ask questions?" Of 52 inspections, only 23 times was this marked as satisfactory. 6 inspectors did a review every time, 8 others never did, and the rest were in between. There is no correlation between doing a menu review and getting an overall satisfactory marking, i.e., some of the inspectors with three overall "satisfactory's" zeroed out on this question, however, the inspectors who needed improvement on every inspection never asked to review the menu.

Ins3 evaluates whether the inspector spends time watching and evaluating the food handling practices. Out of 52 inspections, only 25 were marked as satisfactory. The breakdown is exactly as above: 5 inspectors always watched, 6 never did, and the rest were in between. However, neither group was the same 5 individuals!

Ins8 measures the degree to which inspectors were focusing on the various CDC risk factors. It is difficult to score well in this category, because there are a number of factors rolled into one question, and missing one of the factors was enough to cause a mark of "needs improvement". For example, an inspector could take temperatures, verify food sources, look for cross-contamination, and check sanitizer use and hand washing, but if they ignored demonstration of knowledge, it was not satisfactory. To be fair, the MHD is not yet enforcing the newer food code changes including no-bare-hand contact and demonstration of knowledge, but they should be *noting* it and talking with the operators. This, in fact, was happening pretty consistently with bare hand contact, but a number of inspectors completely ignored demonstration of knowledge. All that is required to fix that is more of a focus on asking questions. This will be discussed more in a later section. Ins8 was by far the most polarized question. Only 2 inspectors were "in between". The rest were either always-satisfactory (6) or always needing improvement (10).

Finally, Ins4 was better than the other questions discussed here, but could also be improved. Therefore, it merits some discussion. Ins4 is concerned with equipment and facilities that could cause problems with food. The Department is trying to discourage this from being the focus of inspections, yet if situations exist, they need to be written. If a cutting board is cracked, it can harbor bacteria. If potentially hazardous foods are being held in the top of a sandwich table, some in plastic inserts, some in metal, and the food in the plastic is warmer than the food in the metal, this should be pointed out to the operator. 12

inspectors focused on this area enough to merit satisfactory on every inspection, 2 never paid any attention, and the rest were in between.

All this data is summarized in the table below. For example, Inspector #1 was "satisfactory" overall on all three inspections, but missed Ins1 one out of three, Ins3 two out of three, etc.

Insp #	Overall	Ins1	Ins3	Ins8	Ins4
1	3	2	1	3	2
2	3	0	3	0	3
3	3	2	2	3	3
4	3	3	2	3	3
5	0	0	0	0	0
6	2	2	2	2	2
7	2	3	2	0	1
8	1	1	1	0	2
9	3	1	3	0	3
10	3	3	3	0	3
11	3	0	3	2	3
12	2	0	0	3	3
13	3	3	2	0	3
14	0	0	0	0	1
15	0	0	0	3	3
16	1	3	0	2	0
17	1	0	1	0	2
18	3	0	0	0	3

## Part 6. All MHD Does Right:

The Milwaukee Health Department is a good example of a professional and committed organization. In an effort to focus their resources where they are most needed and can have the greatest impact, they have sorted their food service establishments into categories of low, moderate, and high risk.

High-risk places are targeted to be inspected three times per year, moderate twice, and low risk once. Of the three inspections for the more complex establishments, one is a

Risk Ratings: Low risk includes taverns that serve no food, schools, and B&B's. Moderate risk includes fast food or short order restaurants, donut shops, and taverns with a very limited menu. Everything else is high risk. Handling raw poultry, other than frozen pre-formed nuggets or breaded filets, automatically puts an establishment into the high risk category.

HACCP-style inspection, where no violations are written, and the inspection is scheduled to guarantee the

time and attention of the management team. This is an interview-style meeting, where a menu item or two is selected and discussed and dissected, step by step, so that the operator learns to spot the areas where bad things can happen to his food products (Hazard Analysis) and how to best prevent them (Critical Control Point). The premise is not to have the operator write full-scale HACCP plans, but rather to learn and apply the fundamentals to all items on the menu.

MHD has a relatively efficient system of three districts of six field inspectors per region (when fully staffed)<sup>7</sup>. Each region has a supervisor, which allows for a high degree of one-on-one contact, especially important for newer inspectors. Additionally, there are two specialists who work full time on equipment issues and temporary events. This concept creates better uniformity in these two important areas, by allowing the creation of "experts" to whom questions can be funneled in these critical and often confusing areas.

Inspectors rotate through the districts in their region, spending about eighteen months in each district. Regional assignments are decided by seniority. The two specialists work in the downtown office. The three supervisors and the equipment specialist report to the Director, while the temporary events specialist reports to the downtown supervisor.

MHD devotes a fair amount of time and effort to training, although their training budget is shrinking constantly because of budget constraints. Each inspector is also granted dollars to use for continued education; these dollars can be applied to classroom training or to training offered by MHD, or to outside training programs conducted by the State, FDA, etc. The list of seminars and trainings attended, as well as state and national committee service, is impressive. Of the 20 people on staff with degrees, there are 8 Associate degrees, 6 BA's, 5 BS's, and a MPA. 15 individuals have attained their Registration as Sanitarians- a very excellent percentage. The organization is also well represented at the Wisconsin Environmental Health Association. The Director is a prime player on the WALHDAB Committee- an organization of local health departments which meets quarterly with the Department.

Training and excellent handouts are also provided for the operators at no cost. Many of the handouts are written in several languages, recognizing the cultural diversity in Milwaukee, as well as the

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<sup>7</sup> MHD has openings for two field inspectors as of the time of this audit.

need to provide assistance, education, and support for the ever-growing segment of restaurant help for which English is a second language at best.

## **Part 7. Analysis of the Areas that Need Improvement:**

We mentioned four areas that could be improved:

- Did the inspector review the menu or ask questions?
- Did the inspector take the time to really watch and analyze the operation?
- Did the inspector focus on CDC risk factors?
- Did the inspector recognize when equipment and furnishings could cause a problem?

Why were these a problem? What could be done to improve them? Let's discuss them one at a time:

### *Did the inspector review the menu or ask questions?*

Even in situations where the inspector is comfortable and familiar with the menu, this important step should not be overlooked, yet it was 56% of the time. The value of this step is that it accomplishes a number of things at the same time. First, it sets the tone for the inspection. The most effective use of this step is to sit down in a quiet place with the manager, and analyze the menu by category. What menu items, or components of menu items, are prepared in advance? Is anything cooled and reheated? Are any meat products handled raw? What about sauces, gravies, soups, and other menu item components? Ideally, the inspector should get the operator to take the lead here, because it gets the operator thinking about the potential problem areas of his menu (Hazard Analysis) and what can be done to reduce the risks (Critical Control Points). This incorporates HACCP principles informally, so the operator has no reason to be intimidated by concepts he may not understand. Instead, the operator begins to see the inspector as a partner, an expert, and a consultant helping to prevent food borne illness in his establishment. Second, it helps the inspector to narrow her focus and ignore the trivial. Third, it allows the inspector to start building rapport with the operator, rather than simply marching in and beginning the inspection. She can tell the operator why she is there, what she hopes to accomplish, and how she believes she can help him. This is also a great time to discuss new food code issues, provide handouts and brochures, and allow for questions and concerns. Finally, it should begin the process of Demonstration of Knowledge. Not only should the

operator be able to describe the operation at this point, the inspector can later compare what is said with what is actually done.

*Did the inspector assess the processing practices of the employees critical to the production and storage of safe food? In other words, did the inspector take the time to really watch and analyze the operation?*

This question was marked as “satisfactory” a low 42% of the time. There was no correlation between score and experience. In a discussion with the supervisors, they admitted this is one of the areas where they were having the most trouble changing/ improving. This is because the new food code requires a shift in approach, from “floors, walls, and ceilings”, to a focus on CDC risk factors, which include:

- Unsafe Sources
- Inadequate Cooking
- Improper Hold
- Cross-Contamination
- Personal Hygiene
- Other factors, including Demonstration of Knowledge and Consumer Advisory

This requires a change in habits in how the inspection is physically done. Most of the MHD inspectors are very “busy”. They tend to keep moving constantly, taking temperatures, writing notes, making sure they cover every inch of the establishment. This very behavior makes it more difficult to identify violations of a number of the CDC factors. While the inspector may find a cross-contamination issue in the walkin because of improper storage of raw chicken, she will miss the more frequent problem of cross-contamination when the cook handles raw meat and then ready to eat foods. Intuitively, we know that lack of proper hand washing is probably the most frequent violation, and is also the one most likely to cause food borne illness. Yet this violation is often not written because the inspector doesn’t watch the food handler long enough to see a situation where he should, and doesn’t, wash his hands.<sup>8</sup>

*Did the inspector focus on CDC risk factors?*

This is closely related to the previous paragraph. The very concept of CDC risk factors is new to the food code. To determine compliance requires not only a different physical approach (observation vs.

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<sup>8</sup> This problem is by no means limited to MHD- it exists in most local, State, and Federal health agencies. It is much easier to complete a checklist than to watch and analyze behavior.

activity), it also requires the inspector to ask many questions. With only a few exceptions, inspectors with MPH were really lacking in this area. A lot of inspectors would ask the first question, but then not follow up with another as needed. It seemed obvious to the auditors that many of the operators were telling the inspectors what they thought the inspector wanted to hear. In some cases this behavior was so "severe" that the inspector should have told the operator to stop and just tell the truth. That is difficult to do, but it is necessary if MPH truly wants to change negative behavior in the restaurant. All three auditors repeated this thought over and over. Some inspectors asked the manager questions, but never talked to the employees. Others assumed that because a food handler was Hispanic, they could not speak or understand English. Demonstration of knowledge, employee health policies, and consumer advisories often went unmentioned, or, when a question was asked, a partial answer was accepted.

*Did the inspector recognize when equipment and furnishings could cause a problem?*

This was a lesser "needs improvement" than the others, yet at only 77% satisfactory, it deems mention. This was less of a system problem than a lack of awareness by a few inspectors- 4 individuals missed that category on either all three or two of three inspections. The good news is that this should be easy to fix. Typically, this was marked as "needs improvement" because the inspector failed to notice a piece of equipment being misused, or no longer cleanable. The bad news is that the overall approach to restaurant inspections should be placing less emphasis on the physical structure. What is needed is a balance- worry about food contact surfaces, don't worry about non-food contact surfaces.

## **Part 8. Results of Paperwork Audit**

In addition to evaluation of the field inspection activities of MHD, approximately 100 files were randomly pulled to evaluate consistency of follow up and efficacy of the re-inspection process. A number of factors were analyzed, including:

- Do inspection records go back at least three years (when applicable)?
- The number of orders written, and the number of those orders still outstanding after the first, second, or third re-inspection?
- How many times were re-inspection fees charged?

- Are critical violations emphasized over non-critical?
- Are critical violations resolved within the time frame specified?

MPH has an automatic re-inspection policy for their establishments. If an order is written, it is to be followed up 14 days later to verify correction. If orders are still outstanding, the inspector will return after 28 days. If there are still outstanding orders, the inspector will return again after 42 days. This 3<sup>rd</sup> re-inspection is supposed to incur a charge to the operator.

This rather unusual policy does have the effect of getting the inspectors into the establishments frequently, but with a narrow focus- to verify that previously written orders are followed up. If there is an obvious new critical violation, it will or could be noted, but normal inspection activities (taking temperatures, evaluating food handling) are not conducted.

Another quirk of the program has to do with the policy of inspecting on one day, and presenting the inspection the next. This gives the inspector the opportunity to type the inspection on a piece of software, so it is very easy for the operator to read. That's the upside. The downside is that:

- Critical violations that would normally be the subject of a next day re-inspection are instead noted on a separate file card that the inspectors maintain. Thus, when auditing the official record of an establishment, it is not clear if critical violations were corrected in a timely manner.
- An additional impact of this delay between doing the inspection and presenting the findings is the loss of a sense of urgency. In larger operations with multiple managers, there is often a different manager present. Not having been there, the new manager may not accept and absorb what the inspector is telling her.
- And what if the inspected manager is the G.M. or the owner, but the manager the inspection is being presented to is a lowly assistant? The chance of the information being forcefully passed on to upper management and the staff is greatly reduced. The results of the paperwork audit are shown below:

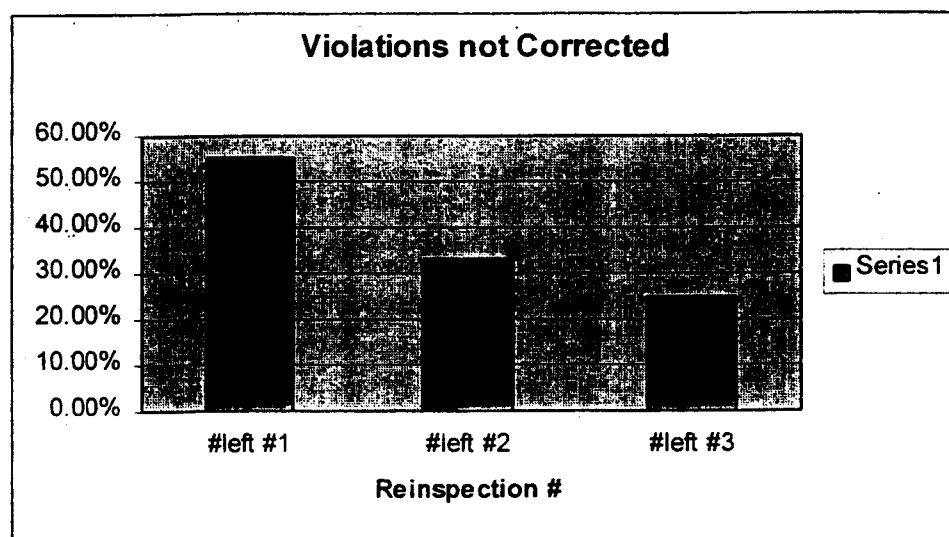
The Department feels that these "downside" items would be worth bearing if the software being used was giving the supervisors the ability to track types of violations or CDC risk factors per inspector, district, or type of establishment. Unfortunately, this is not the case.



After eliminating the establishments with no initial violations (18 of 90), the results of the re-inspection program are ("R.I." = re-inspection):

# Original Violations	Remaining after 1 <sup>st</sup> R.I.	Remaining after 2 <sup>nd</sup> R.I.	Remaining after 3rd R.I.	3 <sup>rd</sup> R.I. not completed	Charged for 3 <sup>rd</sup> R.I.
1036	570	344	256	10/72	5/62
	55.02%	33.2%	24.71%	13.89%	8.06%

Of the 72 inspections evaluated, 1036 violations were written, an average of just over 14 violations per inspection. 268 (26%) were deemed to be critical. This evaluation did not track if critical violations were corrected on time, in part because next day visits, when many critical violations should be corrected, are not recorded on a re-inspection form.



The above graph simply shows another view of the results of the re-inspections. Even after 3 re-inspections, 25% of the original violations are still in existence<sup>9</sup>. Less than half the violations are corrected in the first two weeks. Taking into consideration the fact that the inspector returned to the establishment the day after doing the inspection, up to five visits per establishment may occur with only a 75% success rate at

<sup>9</sup> Subsequent follow-up proved that the total corrections rate was much higher- close to 100%. The difference in findings is that paperwork can take some time in process before being filed properly.

reducing violations. There is no "standard" for how many orders should be corrected in what time period.

Typically, however, violations are divided into three categories:

- Critical- if the activity continues to exist unabated, there is a strong potential for negative public health consequences- food at an unsafe temperature, improper sources, hand washing problems, dish machine not sanitizing. These violations are generally given an "immediate" correction order, meaning fix immediately, or use alternate methods until the violation can be corrected.
- Serious- conditions exist that need to be addressed in a timely fashion, but no imminent public health hazard exists. These are typically cleaning issues or maintenance of food contact surfaces. One to two weeks is a reasonable time frame for correction.
- Structural- issues requiring outside intervention or a disruption of normal activities, such as painting, plumbing repairs, replacement of major equipment, etc. Depending on severity, correction time may range from 2-4 weeks, or may be negotiated for more extensive structural repairs.

Regardless of the times allowed for corrections of violations, there should be a coherent, overall policy, containing the following elements:

- Standardized as much as possible, that is, all inspectors should typically allot the same correction time for similar violations.
- Inspectors should have the ability to override the standard when needed, and in either direction. If extensive structural repairs are ordered, 3 or even 6 months may be allowed. On the other hand, when dealing with a facility with chronic cleanliness issues combined with an ongoing failure to correct written orders, occasionally a 24-hour, "clean up or else" order can be extremely effective.
- Operators should agree to the established dates, and should be made aware that failure to comply will have consequences.
- Those consequences should be clearly spelled out in advance, and consistently adhered to. For example, failure to correct any critical violations, or X number of other violations within the allotted correction time, should result in a citation, fine, attorney referral, etc.

## **Part 9. Citation Policy**

MHD has the authority to issue on-the-spot citations for critical or repeat violations. Each citation costs the operator approximately \$400. During the course of the audit, one operator was issued a citation for failure to have soap and towels at the primary hand sink. The inspector said this was a repeat violation and the operator had been verbally warned at the previous inspection. At another inspection, the owner/operator had disregarded previous orders to become certified or have an employee certified. Considering the operator had been in existence for 13 years, and the operation has never had a certified operator, this should have been a prime candidate for a citation, yet none was even mentioned.

A number of the inspectors were questioned about the proper use of the citation policy. Most were unclear exactly when to apply or use their citation authority, and many admitted they were confused by the program.

When a citation is written, it is not attached to the file/ inspection. Supervisors have to ok citations written by more junior inspectors. Inspectors turn the citations over to the supervisors, and every month the citations are sent to the central office. Supervisors therefore are not tracking who is writing citations, how many are written, or what they are written for. Without this data available to all staff, it is no wonder there is confusion, as well as a lack of coherent use of what could be a useful tool.

## **Part 10. Recommendations**

Overall, the Milwaukee Health Department is a very good program, with a foundation based on training and continuing education, a strong system of supervisory support, a frequent presence in the regulated establishments, inclusion of modern food safety principles, and specialization where appropriate. As stated earlier, they do many things very well. With a few modifications, their program can become even more effective than it already is. Suggested changes:

1. The inspection form being presented to the operators is the older form, which is based on the "floors, walls, and ceilings" inspection model. Not only does this fail to send the correct message to the operator, it also impacts the focus of the inspector. The old adage "when all you have is a hammer,

everything looks like a nail" applies here. Inspectors should be focusing on CDC risk factors, therefore they should be using an inspection form based on CDC risk factors (see appendix 2 for an example).

2. The practice of returning to the office to type up the inspection form should be discontinued. As stated earlier, if this information was being entered into a database, and the supervisors could analyze and use the data to improve the department, the tradeoffs might be worthwhile. In this case, however, the only positive is a more legible report. The negatives include a loss of continuity and urgency because of the time between the inspection and the presentation of the results, the extra visit required, as well as the time lost by requiring people without keyboard skills to type their work.
3. Like most other health departments in the State, violations are not being tracked and analyzed. In fact, there is a curious lack of data analysis at all. Supervisors are unable to tell who is writing what type of violations, whether specific types of violations occur more or less often in certain types of restaurants, or even by risk category. By all accounts, computerization has come slow to MHD. If no other changes are made, adding data-crunching capabilities should be considered an absolute necessity.
4. A serious evaluation of the present re-inspection policy should be made as soon as enough data can be gathered. While the current policy does get the inspectors into the establishments frequently, the Department feels this is not the most effective use of time, nor does it seem to be achieving compliance results. When we questioned the policy of giving two re-inspections for "free", the response was that the cost was built into the annual fee. However, 2 re-inspections on almost every establishment could also translate into one additional annual inspection on at least half of the restaurants at the same cost. Inspections tend to have more meaning than re-inspections. Furthermore, the operators are conditioned now- they have no sense of urgency or motivation to correct violations quickly, because they know no cost is involved until the third time. An education-focused program is excellent, but without any teeth behind it, what motivation does the operator have to receive the education? Depending on altruistic behavior ignores how busy these people are, and how many other priorities they have. Our recommendation is that if the establishment has critical violations or greater than X total violations that cannot be corrected at the time of the inspection, they should be re-inspected- and charged for it. If conditions are not corrected by the re-inspection, citations should be issued. Places without criticals and only a few minor problems should not need follow-up.

5. The current rotational policy for MHD inspectors is 18 months- that is, every year and a half, inspectors swap districts within their regions. There are arguments for and against the policy of moving inspectors around. These include the issues discussed in the box below.

	Staying in one territory longer	Moving frequently
<b>Pros</b>	Excellent rapport can be built up with better operators, increasing voluntary compliance	Operators are exposed to many different approaches and areas of emphasis
	Inspector can focus in on ongoing problems in a particular establishment	Inspectors are less likely to get too friendly with an operator
	Familiarity with the operation can reduce inspection time required.	Inspectors are less likely to get bored by seeing the same places over and over.
	Operators may be more comfortable with continuity	Personality "issues" less likely to come into play.
	Avoid loss of efficiency having to constantly learn a new area.	Prevents an inspector in a particularly "tough" area from burning out.
<b>Cons</b>	Familiarity with an operation can cause lack of "vision"- the syndrome of seeing what we expect to be there	Rapport between inspector and operator has little time to develop- inspectors are just faceless bureaucrats
	Inspector may become friends with the operator- a problem if she hesitates to write violations or issue citations	Problem operators could stay problems longer, because new inspector has to learn the problems before reacting to them
	After a long time with inspector A, it can be a real shock to the operator if inspector B has a dramatically different approach	The "learning curve" associated with learning a new area reduces the efficiency of the inspector.

While the factors for and against moving around seem balanced, it is almost certainly better that inspectors rotate periodically. Is there an optimal rotational period? Perhaps not, but 18 months does seem a little fast. This is an area that merits internal discussion.

6. The citation policy is confusing and fraught with potential problems. Because the decision to issue a citation is left to the individual inspector, operators may be presented the opportunity to claim the citation they were issued was arbitrary and capricious. This is not a recommendation that the citation authority be taken away, rather that specific guideline be written and published so that there can never be a question of favoritism or bias. The Department recommends that citations be tied to the re-inspection policy. Failure to comply with written orders by the negotiated date will result in a citation. The only exception would be, obviously, minor violations that have no significant public health impact. However, when dealing with ongoing problems, such as the establishment that never has soap at the hand wash sink, there would be no need to wait for a re-inspection. Rather, a written warning could be presented to problem operators that documents the ongoing problem, and notifies the operator that if the violation exists at any type of visit by MHD, a citation will be offered. This same policy

could be used for establishments that always have many minor violations, i.e., the "clean it up or else" action. Of course, operators should have access to an appeal process if they feel they were treated unfairly.

7. Two types of behavior were noticed by the auditors that some operators exhibited to the inspectors. These behaviors caused problems in communication that are probably hindering the effectiveness of the MHD program. These problems are absolutely not limited to Milwaukee; they exist throughout the state. The first is the male chauvinist attitude that members of certain ethnic groups or cultures may have toward women inspectors- especially younger women. The other, more pervasive problem is the operator who, often from cultural norms, other times just from personality, will tell the inspector whatever he thinks the inspector wants to hear.<sup>10</sup> They seem to think that the goal is to be agreeable enough so that the inspector will go away. Often, that is exactly what happens, and no real change of behavior has been accomplished. The Department recommends a combination of formal assertiveness training for all field inspectors, coupled with ongoing role-playing sessions at the periodic staff meetings.
8. Supervisors mentioned that an effort was already underway to change the focus of the inspections onto the CDC risk factors. Certainly, most of the inspectors will say they are trying to do just that. The results, unfortunately, tell a different story. One possible solution is to address the *behavior*, rather than the *goal*. A baseball analogy could apply here. If we wanted to take a home run hitter with a low overall batting average, and turn him into a singles hitter so that his batting average (and value to the team) would improve, we would start with explaining the goal, just as MHD has done. The next step, however, is hours in the batting cage, teaching our hitter to shorten his stride, narrow his stance, and choke up on the bat. In the same way, training and role playing should be concentrating on teaching the inspectors how to feel comfortable just standing and watching food handling, and how to ask question after question to learn what is really going on. This new behavior will in time take the place of the "busy-ness" behavior many of the inspectors are now in the habit of.

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<sup>10</sup> The Department wants to make it absolutely clear that these statements should not be construed as racist or defamatory toward any ethnic or cultural group. This type of behavior exists in every culture in the world, including our own.

9. HACCP training for operators can be a good thing. It can also be a waste of very important inspector time. The current policy is that high-risk establishments will receive one "HACCP-style" inspection. This is an interview with the operator, at which basic HACCP concepts are discussed. We like the concept very much, but wonder about the execution. There are two potential drawbacks:

- These are not always voluntary. Therefore, at least some of these training sessions are being given to operators who either don't care, or are not at a point where these concepts can even be incorporated<sup>11</sup>.
- All instructors are not created equal. What level of consistency and uniformity can be achieved by 18 different health inspectors, each with a unique background, experience, training, and even buy-in to HACCP?

Forcing each inspector to be familiar enough to try to teach HACCP is an admirable goal.

However, better results may be achieved by identifying 2 or 3 of the best instructors on the staff, identifying operators willing and ready to learn, and putting them together in a real-life, hands on training. This would also represent a more efficient use of scarce resources.

## Part 11. Conclusion

The Milwaukee Health Department is a professional organization filled with committed and caring individuals. They are doing many things right, not the least of which is a willingness to try new approaches and methods. Their commitment to training their people is an important foundation. Their biggest need is improvement in the collection and analysis of data, and implementation of a more effective compliance program. Many of the recommendations made in the previous section hinge on finding ways to measure the end results of policies and procedures- a need shared by many health departments throughout the state.

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<sup>11</sup> Teaching HACCP to someone who still doesn't enforce a hand washing policy, uses poor cooling techniques, and routinely cross-contaminates food products is like teaching Calculus to the average fifth grader. The fundamentals aren't yet in place.

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## **APPENDIX 2**

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# RESTAURANT / RETAIL FOOD SERVICE INSPECTION REPORT

Business Name		Business Address		County	License ID Number
Name of Legal Licensee		Mailing Address of Legal Licensee		Telephone Number ( )	
Current Date	Date of Last Inspection	Release Date	Type of Establishment <input type="checkbox"/> Restaurant <input type="checkbox"/> Retail	Is Operator Certified? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
INSPECTION TYPE (check one) <input type="checkbox"/> Follow-up <input type="checkbox"/> Complaint		<input type="checkbox"/> Pre-inspection <input type="checkbox"/> Downtime	<input type="checkbox"/> Routine <input type="checkbox"/> Other	ACTION TAKEN (check one) <input type="checkbox"/> Summarily Suspend <input type="checkbox"/> Revoke <input type="checkbox"/> Other	
				<input type="checkbox"/> Operational <input type="checkbox"/> Conditional <input type="checkbox"/> Withhold	

## CDC RISK CODES

The CDC Risk Codes listed below are by number and category to assist in grouping and identifying areas where violations exist. Violations will be recorded on pages 2 and 3 of this report. Indicate in the space provided the appropriate code as follows: "IC" if found In Compliance, "NC" if found in Non-Compliance, "NOB" if Not Observed, or "NA" if Not Applicable to the food operation. Superscripted letter <sup>c</sup> indicates that all of the provisions within that section are Critical. Commonly used abbreviations throughout this report are listed on the reverse side of this form.

<b>1. DEMONSTRATION OF KNOWLEDGE</b>		<b>5.5. DATE MARKING &amp; DISCARDING<sup>c</sup></b>	
Code compliance, certified via testing with accredited program, or responses to health safety questions regarding operation		A. RTE, PHF prepared on-site or opened commercial container held for more than 24 hours marked with expiration date	
<b>2. EMPLOYEE HEALTH</b>		B. RTE, PHF/commercial container held at ≤ 41° F for ≤ 7 days	
A. Management awareness of & policy for handling employee health situations		C. If RTE, PHF prepared on-site/commercial container frozen, 1) consume 24 hours of thaw, 2) Mark time before freeze on label	
B. Visible or known symptoms/known diagnosis dealt with according to Food code		D. If frozen RTE, PHF prepared on-site/frozen commercial container is thawed, hold at ≤ 41° F for ≤ 7 days minus time from preparation / opening	
<b>3. CONSUMER ADVISORY<sup>c</sup></b>		<b>5.6. TIME<sup>c</sup></b>	
Inform consumers about the increased risk associated with eating animal foods in raw or undercooked form		Public health control, food is cooked & served within 4 hours	
<b>4. FOOD FROM APPROVED SOURCE</b>		<b>6. HIGHLY SUSCEPTIBLE POPULATIONS<sup>c</sup></b>	
A. Food from approved source / no home prepared foods <sup>c</sup>		A. Prepackaged juice/beverage containing juice with a warning label (21 CFR, Section 101.17(g)) not served	
B. All shellfish from NSSP sources / no recreationally caught shellfish <sup>c</sup>		B. Use pasteurized eggs in recipes if eggs are undercooked; & if eggs are combined unless cooked to order & immediately served; used immediately before baking & thoroughly cooked; or <i>Salmonella</i> Enteritidis controlled by a HACCP plan	
C. Game & wild mushrooms approved Source <sup>c</sup>		C. Raw/partially cooked animal food & raw seed sprouts not served	
D. Food received proper temps / protected from contamination during transportation & receiving / safe & unadulterated food <sup>c</sup>		D. Unopened food package not re-served	
E. Shellstock tags retained for 90 days <sup>c</sup>		<b>7. PROTECTION FROM CONTAMINATION<sup>c</sup></b>	
F. Documentation maintained, fish parasite destruction; 90 days		A. Raw animal foods separated from raw or cooked RTE food	
G. CCP records maintained in accordance required HACCP plan <sup>c</sup>		B. Raw animal food separate storage, preparation, hold, & display	
<b>5.1. TIME / TEMPERATURE CONTROL INADEQUATE COOKING<sup>c</sup></b>		C. Food protected from environmental contamination	
A. Raw eggs; prepared for imdte. service cook to 145° F for 15 sec.. Broken, not for imdte. service cook to 155° F for 15 sec.		D. Food is not re-served after being served or sold to a consumer	
B. Comminuted fish, meat, & game animals cook to 155° F for 15 seconds		E. Unsafe, adulterated or contaminated food discarded or reconditioned	
C. Pork roasts & beef roasts, including formed roasts, cooked to 54° C (130° F for 121 minutes or as chart specified.		<b>8. FOOD-CONTACT SURFACES</b>	
D. Ratites & injected meats cooked to 155° F for 15 seconds		Surfaces / utensils clean to sight, touch & sanitized before use <sup>c</sup>	
E. Poultry; stuffed fish/meat/pasta/poultry/ratites; or stuffing containing, cooked to 165° F for 15 seconds		<b>9. PROPER, ADEQUATE HANDWASHING</b>	
F. Wild game animals cooked to 165° F for 15 seconds		Hands clean & properly washed <sup>c</sup>	
G. Whole-muscle, beef steaks cooked to surface temperature of 145° F on top & bottom. Meat surfaces has a cooked color		<b>10. GOOD HYGIENIC PRACTICES<sup>c</sup></b>	
H. Raw animal foods rotated, stirred, covered, & heated to 165° F in microwave. Food stands for 2 minutes after cooking		Employees eat, drink, smoke in designated areas/utensils used once to taste food/no animals present/employee w/cold symptoms isolated.	
I. All other raw animal foods cooked to 145° F for 15 seconds		<b>11. PREVENTION OF CONTAMINATION FROM HANDS<sup>c</sup></b>	
<b>5.2. REHEATING FOR HOT HOLDING<sup>c</sup></b>		Exposed, RTE food not touched by bare hands unless alt. plan	
A. PHF rapidly reheated to 165° F for 15 seconds		<b>12. HANDWASH FACILITIES</b>	
B. Food reheated to 165° F or higher in a microwave		A. Handwash sink convenient & accessible	
C. Commercial RTE, if reheated, held at 140° F or above		B. Handwash facilities supplied with soap, towels, water, signage	
D. Unsliced portion beef roasts reheated hot hold, cook Temps.		<b>13. CHEMICAL</b>	
<b>5.3. COOLING<sup>c</sup></b>		A. No unapproved food or color additives. Sulfites not applied to fresh fruits & vegetables intended for raw consumption <sup>c</sup>	
A. Cooked PHF cooled from 140° F to 70° F within 2 hours & from 70° F to 41° F in 4 hours		B. Materials, chemicals, lubricants, pesticides, medicines, first aid supplies <sup>c</sup> , & other personal care items identified, stored, & used	
B. PHF (ambient temp.) cooled to 41° F or below within 4 hours		C. Poisonous or toxic materials held for retail sale properly stored <sup>c</sup>	
C. PHF legally received above 41° F cooled to 41° F w/n 4 hours		<b>14. CONFORMANCE W/APPROVED PROCEDURES<sup>c</sup></b>	
<b>5.4. PHF COLD AND HOT HOLDING<sup>c</sup></b>		Complies with required variance and/or required HACCP procedures by monitoring CCPs & taking corrective actions	
A. PHF maintained at 41° F or below			
B. PHF maintained at 140° F or above			
C. Roasts held at a temperature of 130° F or above			

Business Name

**Non-CDC Violations**

Indicate in the space provided the appropriate code as follows: "IC" if found In Compliance, "NC" if found in Non-Compliance, "NOB" if Not Observed, or "NA" if Not Applicable to the food operation. Superscripted letter <sup>c</sup> indicates that all of the provisions within that section are Critical.

PERSONNEL		WATER	
	15. Personal Cleanliness (fingernails, jewelry, outer clothing, hair restraints)		28. Safe water source <sup>c</sup> , hot & cold under pressure, adequate quantity <sup>c</sup>
FOOD & FOOD PROTECTION		PLUMBING	
	16. Food source <sup>c</sup> , original container, properly labeled, condition, used <sup>c</sup> , honestly presented <sup>c</sup> , segregated distressed products		29. Installed, maintained <sup>c</sup>
	17. Plant food cooking for hot holding		30. Cross connection <sup>c</sup> , back siphonage, backflow prevention <sup>c</sup>
	18. Protection from contamination – noncritical items	TOILET FACILITIES	
	19. Facilities/equipment to control product temperature		31. Number, convenient, accessible, designed, installed
	20. PHF properly thawed		32. Toilet rooms enclosed, self-closing doors; fixtures, good repair, clean proper waste receptacles
	21. Dispensing of food / utensils properly stored	SEWAGE	
FOOD EQUIPMENT			33. Sewage & waste water disposal <sup>c</sup>
	22. Thermometers provided & conspicuous	GARBAGE & REFUSE DISPOSAL	
	23. Food- & nonfood-contact surfaces: designed / constructed <sup>c</sup> , maintained, installed, located, operated, cleanable <sup>c</sup>		34. Containers or receptacles: covered, adequate number, insect/rodent proof, frequency of removal, clean. Area properly constructed, necessary implements, supplies
	24. Warewashing facility: designed, constructed, installed, located, operated, cleanable, used	PHYSICAL FACILITY	
	25. Wiping cloths, linens, napkins, gloves, sponges: properly used, stored		35. Floors, walls, ceilings: designed, constructed, maintained, clean
	26. Storage, handling of clean equipment, utensils		36. Lighting, ventilation, dressing rooms / designated areas maintained
	27. Single-service / single-use articles: storage, dispensing, use, no reuse		37. Premises maintained free of litter, unnecessary articles, cleaning & maintenance equipment properly stored
			38. Complete separation from living / sleeping quarters; laundry

**CDC Risk Code Factor Abbreviations And Violation by Category Numbers Table**

(Use this table to group CDC risk factor listed below with violation from page 1)

Unsafe Sources (US)	Inadequate Cooking (IC)	Improper Hold (IH)	Cross Contamination (CC)	Personal Hygiene (PH)	Other CDC Factors (O)
4A-G	5.1A-I 5.2A-D	5.3A-C 5.4A-C 5.5A-D 5.6	7A-E 8	2B 9 10 11 12A-B	1 2A 3 6A-D 13A-C

For each violation cited, use above table and record CDC Risk Code Factor abbreviation (such as "US" or "IH"), violation number, list from the Wisconsin Food Code(WFC) the reference number that refers to the area in violation. Describe the violation, corrective action required, corrective action that should to be taken, and give a date by which violation corrective action is to be completed.

CDC Code Factor Abbreviation		Violation Number	WFC Reference Number
Violation Description			
Corrective Action Required			
Corrective Action Taken			
Corrective Action Date			

**Business Name**

**CDC Risk Code Factor Abbreviations And Violation by Category Numbers Table**

(Use this table to group CDC risk factor listed below with violation from page 1)

Unsafe Sources (US)	Inadequate Cooking (IC)	Improper Hold (IH)	Cross Contamination (CC)	Personal Hygiene (PH)	Other CDC Factors (O)
4A-G	5.1A-I 5.2A-D	5.3A-C 5.4A-C 5.5A-D 5.6	7A-E 8	2B 9 10 11 12A-B	1 2A 3 6A-D 13A-C

For each violation cited, use above table and record CDC Risk Code Factor abbreviation (such as "US" or "IH"), violation number, list from the Wisconsin Food Code (WFC) the reference number that refers to the area in violation. Describe the violation, corrective action required, corrective action that should to be taken, and give a date by which violation corrective action is to be completed.

<b>CDC Code Factor Abbreviation</b>	<b>Violation Number</b>	<b>WFC Reference Number</b>
<b>Violation Description</b>		
<b>Corrective Action Required</b>		
<b>Corrective Action Taken</b>		
<b>Corrective Action Date</b>		

<b>CDC Code Factor Abbreviation</b>	<b>Violation Number</b>	<b>WFC Reference Number</b>
<b>Violation Description</b>		
<b>Corrective Action Required</b>		
<b>Corrective Action Taken</b>		
<b>Corrective Action Date</b>		

<b>CDC Code Factor Abbreviation</b>	<b>Violation Number</b>	<b>WFC Reference Number</b>
<b>Violation Description</b>		
<b>Corrective Action Required</b>		
<b>Corrective Action Taken</b>		
<b>Corrective Action Date</b>		

I understand and agree to comply with the corrections ordered on this report. I understand that failure to comply could result in legal action or loss of license.

**SIGNATURE - Establishment Owner / Operator**

**Date Signed**

**SIGNATURE - Inspector**

**Date Signed**

## COMMONLY USED ABBREVIATIONS

Abbreviations commonly used throughout the Restaurant / Retail Food Service Inspection Report can be also be found in the Wisconsin Food Code and are listed have been listed below:

**PHF - Potentially Hazardous Food**

**RTE - Ready to Eat**

**HACCP - Hazard Analysis Critical Control Point**

**CCP - Critical Control Point**

**NSSP - National Shellfish Sanitation Program**

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**AUDIT RESPONSE**

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## Interoffice Memorandum

### Milwaukee Health Department

841 N. Broadway  
Milwaukee, WI 53202  
Ph.: 414-286-3521 Fax 286-5990

**To:** W. Martin Morics, Comptroller  
**CC:** Bevan Baker, Yvette Rowe, Loyce Robinson, Ali Tahler  
**From:** Dr. Seth Foldy, Health Commissioner *[Signature]*  
**Date:** 8/28/02  
**Re:** Audit of Restaurant Regulation

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**Enclosed is the Health Department's final response to the report on the  
"Audit of City of Milwaukee Restaurant Regulation."**

Thank you for offering the Health Department an opportunity to append this response.  
As always, we appreciate the open communication your office has kept throughout the  
entire process.

## **Response by Dr. Seth Foldy, Commissioner of Health, August 27,2002**

### **Order of Response Items**

#### **I. Audit Conclusions Response Summary**

##### **A. Restaurant Complaint Investigation**

##### **B. Restaurant Inspection Process**

**Response to Recommendation 1:** *Inspector Staff Allocation*

**Response to Recommendation 2:** *Inspector Training and Inspector Practices*

**Response to Recommendation 3:** *Personnel Classification Study*

##### **C. Restaurant Sanitary Enforcement**

**Response to Recommendation 4:** *Develop and Implement Progressive*

*Enforcement of the Wisconsin Food Code*

**Response to Recommendation 5:** *Enforce City Ordinance Requirements on Closing*

*Restaurants for Failure to Pay Fees and Fines*

##### **D. Restaurant Compliance Monitoring**

**Response to Recommendation 6:** *Prepare Annual Restaurant Compliance Reports for the Mayor and Common Council*

**Response to Recommendation 7:** *Phase in Development of a Restaurant Compliance Monitoring System*

**Response to Recommendation 8:** *Consider Posting the Results of Restaurant Inspections on the Internet*

**Response to Recommendation 9:** *Develop an Audit Implementation Plan*

## **I. Audit Conclusions Response Summary**

Thank you for offering the Health Department the opportunity to append its perspective to your study "Audit of City of Milwaukee Restaurant Regulation (August 2002)" conducted in collaboration with the Wisconsin Division of Public Health. We appreciate the professionalism and open communication maintained by your staff throughout the process. As a result, my staff and I feel the audit is a valid and valuable snapshot of our Consumer Environmental Health restaurant activities during a period of momentous change in food safety assurance. While I question one estimate in the report (see below) I nevertheless support the audit's overall recommendations. Indeed, implementation steps toward most of the recommendations had been initiated prior to the audit, so the audit increases our confidence that we are moving in the right direction.

Your evaluation of our food safety program is a snapshot taken in the middle of the most profound transformation in food safety practices in many decades. As your report nicely summarizes, food protection and safety assurance programs are abandoning static checklist inspections in favor of a hazard analysis and critical control point (HACCP) approach. The goal is to identify safety weaknesses in the dynamic process of food production, rather than inspecting "floors, walls and ceilings". Our department began preparing for this change in December 2000, training our inspectors in the HACCP process before it was even part of the state Food Code. Wisconsin's Food Code was revised in February 2001 to reflect these new concepts. As your audit notes, from that point we were implementing dramatically changed inspection goals, processes, forms and interactions. The State observation of our inspectors occurred just eight months after adoption of the new Code. Even the audit tool used by the State program has never before been used. (Our last Wisconsin Division of Public Health evaluation was in 1993, and their system was suspended for overhaul shortly thereafter.) Thus there exists no benchmark to compare the Health Department against; we ourselves may be that benchmark. Since we are newly implementing so many of these changes, no matter what was observed in



October and November 2001, I can feel confident we are far beyond that now. We will benefit greatly from the audit because it provides us with a standardized tool to measure and compare our performance over time as this transformation unfolds.

A few other observations are important before addressing specific recommendations. First is that high rates of staff turnover in the food service industry, especially during the economic boom of the 1990s through 2001, have had severe impact on both food handling practices and our inspectional and quality improvement activities. Inspectors are commonly confronted by a new manager and staff with no knowledge of the risk reduction plans developed during the last visit, so the inspector is back at point zero addressing basic sanitation. Some of the promise of the HACCP techniques will require a more stable and better-trained food service workforce. In a similar vein, communicating effectively with the growing numbers of managers and staff who are not proficient in English demands more time and ingenuity on the part of inspectors. Student interns this summer have helped us find printed information and communication strategies to help our staff work with people speaking Spanish, , Hmong, Cambodian, Chinese, and several other languages that are increasingly prevalent in the kitchens of our community.

#### **A. Restaurant Complaint Investigation**

I agree with the audit findings that the MHD investigates customer complaints in a timely and adequate manner.

#### **B. Restaurant Inspection Process**

As noted in the audit, The MHD Risk Assessment Policy establishes procedures prescribing the frequency of restaurant inspections based on risk-relevant characteristics. I note the auditor's conclusion that our inspection frequency has not always been consistent with our own Risk Assessment Policy. A paper record based system made monitoring visit frequencies difficult. The

planned creation of an electronic licensing and inspection database will greatly facilitate the ease of assuring timely inspections.

We agree with the audit that the decrease in restaurant inspections is related in part to the loss of one staff position in 2000, staff vacancies and leaves of absence. However, the 40% reduction in follow-up inspections is a significant program improvement and the result of reinspection fees implemented with food license fee changes in 1999. The reinspection fee is an assessment applied to those operators who require more than two reinspections to gain compliance. This fee was intended to and has proven to be an effective compliance tool resulting in fewer reinspections.

The new Food Code and associated changes in inspection practices are significant changes for staff, requiring new skills and thought processes. Since the beginning of 2001, the primary focus of MHD inspections has been that of identifying and eliminating critical risk factors. The Department will continue to provide training for staff to increase our focus on critical risk factors. In the near future, supervisors will be trained by the Wisconsin Division of Public Health to use a standardized inspection process developed by the FDA. Supervisors will then train our inspectional staff to use this standardized process of looking for the same type of violations and citing them under the correct code section. The aim of standardization is to ensure that inspectional staff located throughout the state will consistently apply the requirements of the Wisconsin food code.

#### **Response to Recommendation 1: Inspector staff allocation**

As noted, during 2001 MHD was already redesigning its processes precisely to meet this recommendation. The audit report correctly acknowledges a nearly 100% increase in the writing of critical violations between 2000 and 2001, indicating that there was significant improvement in our focus on critical risk factors following implementation of the new risk focused inspection system.

I do take exception to the estimate that 6 full-time equivalent positions are dedicated to correcting non-critical violations. In our discussions with the auditor

we learned he assigned an estimate of 2 hours for each re-inspection. In fact, because our staff works in compact districts, our managers calculate that the typical re-inspection for non-critical items takes only one-half hour. The audit also assumed re-inspection of non-critical temporary licenses (festival and other similar vendors) when, in fact, re-inspection for non-critical violations in this setting is rarely performed. It must also be remembered that Consumer Environmental Health personnel are charged by the city with documenting fire code, building code, tavern and security regulation violations during their visits (so as to avoid double- or triple- visiting by other city departments). While these duties are important for health and safety, and create efficiencies for city taxpayers, they inevitably increase enforcement of issues that FDA and CDC do not consider critical food violations. (Some of this information may not have been available to the auditor at the time of final report preparation.)

#### **Response to Recommendation 2: Inspector training and inspector practices**

My staff and I agree that continued training to increase inspector competence in identifying critical risk factors is a priority, as well as training to address the audit deficiencies related to communications and asking probing and open-ended questions during site visits. This would enable staff to ascertain as much information as possible about a restaurant's food handling practices.

- a) Inspector effectiveness will improve as staff is trained and becomes more familiar with the new methodology of inspections. In just one year the audit recognized a significant improvement in identifying critical risk factors.
- b) The Health Department is developing a new inspectional database along with the appropriate equipment will allow staff to provide a hard copy of the inspection report while at the establishment. The auditors may not have been aware that handwritten reports are presented to the operator at the conclusion of the inspection when the number of violations is not

significant. Until the new system is up and running, staff are instructed to correct health hazards and conduct an exit interview giving immediate feedback to the operator before leaving the establishment.

- c) The new inspection software system will include check-off for compliance as well as non-compliance
- d) Extending the district rotation cycle will be considered. The 18-month rotation has been important to staff in the past, as some of the districts are very challenging and others fail to provide much variety in the type of facilities inspected.

### **Response to Recommendation 3: Personnel classification study**

I have no objection with the audit recommendation that a reclassification study be undertaken to assure that staff salary is commensurate with job duties and responsibilities.

### **C. Restaurant Sanitary Enforcement**

As noted by the audit, our department uses both education and enforcement to assure food safety. I agree that our 1992 policies were outdated and inadequate. CEH Division's policies and procedures were already being revised to include enforcement strategies for long-term compliance given the new HACCP philosophy. Our procedures will be revised to ensure that staff has clear indications of when and how it is appropriate to use orders, citations, and license suspension.

While the audit notes a decrease in volume of citations, as noted above, in 1999 we initiated a new tool to increase compliance with orders by adding a re-inspection fee that creates an automatic financial incentive to address all violations within three inspections. Thus the same effect has occurred without the resorting to citations (which can be very labor intensive) in many cases.

We will continue to place substantial emphasis on the education of managers and food handlers, targeting those facilities with the greatest need and teaching managers to engage in active managerial control as required by the food code. We believe there is a need to develop better working relationships with industry to realize long term improvements in food handling. This involves working cooperatively with industry to facilitate system changes in their food preparation process, which will control identified risk factors. Industry is expected to develop controls and must follow through to prevent food handling from falling apart between inspections.

The Department will continue to proactively address the linguistic challenges that impact compliance. As noted earlier in this response, a student intern assisted us over the summer in locating and compiling information in other languages for staff to use.

Finally, I agree that the threat of suspension is apparently underutilized for failure to pay license fees or enforcement of unpaid citations. Department procedures will be upgraded to deal with these audit findings.

#### **Response to Recommendation 4: Develop and implement progressive enforcement of the Wisconsin Food Code**

I concur with the need to revise division policies and procedures related to when various types of enforcement actions should be taken, improving consistency, reducing staff confusion and encouraging compliance. As noted above, the reinspection fee implemented in 1999 has been effective in improving compliance, as the audit report confirms a 40% decrease in reinspections between 1997 and 2001. We also plan to investigate the use of incentives, operator recognition and posting inspection records on the City's web site as an incentive to gain compliance. The implementation of electronic inspection records will help us monitor where recurring problems with compliance have occurred in order to most effectively use progressive enforcement.

**Response to Recommendation 5: Enforce City ordinance requirements on closing restaurants for failure to pay fees and fines**

The MHD will establish new procedures related to failure to pay license fees that make use of license suspension as an enforcement tool. We will also create a procedure so that we can be apprised of unpaid citations at Municipal Court.

**D. Restaurant Compliance Monitoring**

I concur with the auditor regarding the value of periodically assessing program outcome effectiveness. This is why we have established outcome measures as an integral part of our own budgeting process, measures that are shared with the City's Budget and Management Division, City Council, and the public. Beginning in 2002 we are monitoring and reporting the following: 1) the percent of establishments with critical food borne illness violations on inspection; 2) the percent of establishments found to have short-weighed devices or packages; 3) percent of all Consumer Environmental Health orders related to personal hygiene or cross contamination (critical behavior violations); 4) percent of retail establishments inspected each year (goal=100%). We had already made an internal commitment to quarterly review of program performance in these and other program outcomes measures.

Once developed and implemented, the Department's inspectional and license database will permit effective monitoring of individual establishment histories and our overall inspectional and compliance program outcomes. Supervisors will be able to generate reports that will help them to manage inspectional and other program activities in a more efficient manner.

**Response to Recommendation 6: Prepare Annual Restaurant Compliance Reports for the Mayor and Common Council**

I concur with this recommendation, it will now occur automatically for the outcome measures cited above as part of the budget process.

### **Response to Recommendation 7: Phase in development of a Restaurant Compliance Monitoring and Reporting System**

Recognizing the need for improvement in data management, the Department is completing the upgrade of CEH's obsolete dBase food licensing database. The next phase will include development of an electronic food inspection system to integrate with the licensing system. The proposed inspectional system will utilize wireless PC technology to create a mobile connected office for food inspectors, provide access to the food database, track the type of violations per facility, and document and provide immediate delivery of inspection violations, which will eliminate the need to return to the office to generate a report. As the Division's new electronic inspection system is developed, inspection frequencies will be based upon CDC risk factors found during an inspection as well as by the restaurant risk category. In other words, if a facility controls critical risk factors the inspection frequency will decrease and if they do not control the risk factors, the inspection frequency will increase. The electronic system will allow us to aggregate all inspection data and other compliance information into one location. The reports will show the impact of inspection efforts on restaurant sanitary conditions through a set of performance measure indicators (as noted earlier, these measures are already being developed). The Department will use this tool to monitor that all policies are enforced in a timely manner.

### **Response to Recommendation 8: Consider posting the results of restaurant inspections on the Internet**

This has been deployed with mixed results in other communities. Until we have an electronic record established (now being created), Internet reporting is prohibitive (requiring transcription of thousands of records). Our division will review the legal ramifications and cost effectiveness of Internet record posting. The ramifications of court decisions related to Woznicki v. Erickson and similar cases will need to be reviewed before taking this step.

### **Response to Recommendation 9: Develop an audit implementation plan**

I have instructed the Milwaukee Health Department compliance analyst to create a quarterly report on our progress towards meeting these recommendations.